REPORT

OF THE

ATTOREY GENERAL

OF THE

State of Florida,

From January 1, 1905, to January 1, 1907.

W. H. ELLIS,

Attorney General.

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ATTORNEY-GENERAL'S REPORT.

State of Florida,
Attorney General's Office,
Tallahassee, March 28, 1907.

Hon. Napoleon B. Broward,
Governor of Florida,

Sir—I herewith submit my biennial report covering the period from January 1st, 1905, to January 1st, 1907. This report contains an account of my official acts and of the receipts and expenditures of this office for the biennial period above named, also a partial account of semi-official transactions and business for the two years named. To give herein a full account of such semi-official business would make this report unnecessarily voluminous.

I have also included herein some sluggestions as to legislation which I deem advisable. As this report will be submitted to the Legislature these suggestions may be regarded as a report to the Legislature within the meaning of Section 13, Article V. of the Constitution.

The official work of this department is constantly increasing. During the past two years the work which has devolved upon the Attorney General has far exceeded the work of any two years within the hisctory of the office, so far as that history is shown by the records of this office. I think it would be within the exact truth to say that the work which now devolves upon the Attorney General is many times greater than it has ever been.

The unofficial correspondence which constitutes part of the semi-official business heretofore mentioned has demanded a large portion of my time. The Attorney General is appealed to for his opinion upon a great number of subjects relating to the duties of county officials and officers of cities and towns. In each letter received one or more questions of law were submitted, and each question required time for consideration. I have given these letters my personal attention and have endeavored to furnish accurate information to the authors, although in many cases it was exceedingly difficult to do so, by reason of the meager and unsatisfactory statement of the facts upon which advice was sought. This feature of the work of the Attorney General has been growing for several years, until it now amounts to a serious interference with the performance of those duties required by the Constitution and laws of the State.

DUTIES OF THE ATTORNEY GENERAL.

The Attorney General is a member of the following boards: (1) Board of Commissioners of State Institutions, (2) Board of Pardons, (3) State Board of Education, (4) Board of Drainage Commissioners, (5) Board of State Canvassers of Elections, (6) Board of Insurance Commissioners, (7)Trustees of Internal Improvement Fund.

In addition to the above, he is also a member of the Board of Commissioners to examine certain Indian War Claims, also a member of the Board to examine into the claims of the several counties for armory rent.

The Attorney General is the legal adviser of the Governor and of each of the officers of the executive department.

It is his duty to prepare marginal abstracts to the acts and resolutions of each session of the Legislature, and to prepare a general alphabetical index to the acts and resolutions of each session of the Legislature.

It is his duty to prepare an index to each of the journals of the two branches of the Legislature.

It is his duty to exercise a general superintendence and direction over the several State Attorneys of the several circuits, and whenever requested is required to give them his opinion upon any question of law.

The Attorney General is reporter for the Supreme Court, and it is his duty to report all the decisions of that court. This duty is one entailing a great deal of work and care, and can only be accomplished in a satisfactory manner by experienced persons. The reading of the proof in performing this work is a very important undertaking and requires a high degree of skill. There are two volumes of these decisions published each year, one covering the January term and the other covering the June term of the court.

The Attorney General is required to appear in and attend to in behalf of the State, all suits or prosecutions, civil or criminal, or in equity, in which the State may be a party, or in anywise interested, in the Supreme Court of this State; and to appear in and attend to *such* suits or prosecutions in *any other* of the courts of *this* State or in any courts of any other State or of the United States.

Under the General Statutes the duties of the Attorney General are materially changed and greatly increased, in the matter of litgation in which the State is a party or in anywise interested. Under the law as it existed before the General Statutes went into effect the Attorney General was not required to appear in and attend such suits or prosecutions in any court other than the Supreme Court of the State, except upon written request by the Governor, but now it is the Attorney General's duty to attend to all such suits or prosecutions in any court without such request from the Governor.

The Attorney General is the legal adviser of the Railroad Commissioners, and it is his duty to represent that body in any litigation that may be instituted by them or against them in any of the courts of this State, and also to represent them whenever called upon to do so, before the Interstate Commerce Commission.

The nature of his duties is such that to each he must give his personal attention.

APPROPRIATIONS AND EXPENDITURES.

	Appropriation.	
For the first six months, 1905—		
Secretary	$ 600.00	
For last six months, 1905—		
Secretary	750.00	
Clerk	450.00	
Incidental expenses	100.00	
Books and book cases	600.00	
For year 1906—		
Secretary	1,500.00	
Clerk	900.00	
Incidental expenses	250.00	
		$5,150.00
Expenses—		
Secretary, years 1905 and 1906	$2,850.00	
Clerk, six months, 1905 and year 1906	1,350.00	
Incidental expenses, 1905	118.14	
Incidental expenses, 1906	164.62	
Books and book cases, 1905 and 1906	514.40	
		$4,997.16
Balance unexpended, January, 1907		$ 152.84

EFFECT AND OPERATION OF ACTS OF LEGISLATURE, 1905.

There is no statute requiring State Attorneys and County Solicitors to report to the Attorney General such defects in the laws as may be brought to their attention, and under Section 13, of Article V. of the Constitution, requiring the Circuit Judges to do so, there have been no reports this year to me. As to the effect and operation of the Acts of 1905, I am not, therefore, prepared to report fully, being by reason of the conditions above mentioned, compelled to rely upon my personal observations of the effect and operation of the aforementioned acts.

Chapter 5377, is an act in relation to the "Drainage and Reclamation of the Swamp and Overflowed Lands in Florida." The purpose of this act was to accomplish as a matter of public and general interest the drainage of the large bodies of swamp and overflowed lands in this State. To this end the act creates a Board of Drainage-Commissioners and vests the board with the power to lay off Drainage Districts, to establish a system of canals, drains, levees, dikes and reservoirs, and to levy an acreage tax upon the swamp and overflowed lands within the district of not more than ten cents an acre. Suits have been instituted by the following corporations, to restrain the collection of the tax by the Board of Drainage Commisioners, upon the ground that the act is invalid, viz: The Southern States Land & Timber Company; Boston & Florida Atlantic Coast Land Company; The Model Land Company, and the Empire Land Company, et al. A temporary injunction was granted by the judge of the United States Circuit Court for the Southern District of Florida restraining the collection of the tax levied upon the lands owned by the above named corporations. The objects intended by the Legislature to be accomplished by the act, therefore, have not been attained. I think some amendments are necessary to perfect the act. Some criticism has been made upon the act, that it empowers the Board of Drainage Commissioners to expend large sums of money without any accounting to any one therefor. This criticism is not true. The money proposed to be raised by the act is public funds, raised by the exercise of the taxing power,

and under the Constitution must be kept by the State Treasurer, and may not be drawn from the treasury except upon a warrant of the Comptroller countersigned by the Governor, and as the Comptroller and Treasurer are required to make a full report to the Legislature of their official acts, it follows that a full report of the receipts and disbursements of the fund would be made to the Legislature.

Chapter 5384 is an act which provides, among other things, for the abolishment of certain institutions of learning and the establishment of others. There was some contention that the act was unconstitutional, and as it involved interests of great importance to the people of Florida, I authorized the institution of Quo Warranto proceedings against the members of the Board of Control to inquire into the authority by which they exercised the offices and powers of members of such board. This proceeding raised the question of the constitutionality of the act, and the Supreme Court decided that the act was valid.

Chapter 5380, which is an amendment to Chapter 4322, provides that in cases where land is timbered and the timber or the right to turpentine same is owned by a person other than the owner of the land, the latter shall be assessed independently and distinct from the value of timber and turpentine privileges, which shall be assessed separate and distinct from the land, etc. This act has produced no little amount of confusion in the matte rof assessments and I think operates to deprive the State of considerable revenue.

CONDITIONAL PARDONS.

A case of great importance, defining the power of the Board of Pardons in the matter of granting pardons upon conditions, was decided by the Supreem Court during the June term, 1906. The title of the case is the State of Florida vs. S. Peter Horn. In 1898 Horn was convicted of an assault with intent to murder, and was sentenced on the 22nd day of April, 1898, to a term of five years in the State prison to begin and run from that date. On January 5th, 1901, he obtained a pardon upon condition that if he should "break the peace, take a drink of intoxicating liquor or other beverage or become in-

toxicated" then the pardon should be null and void and it should be the duty of the sheriff of any county in the State to arrest him and return him to the penitentiary to serve out the remainder of the term. In July, 1906, over three years after his term would have expired, Horn was arrested by order of the Governor and was held awaiting transportation to the State prison upon the charge of having violated the conditions of his pardon. Horn was discharged by the Circuit Judge upon a writ of habeas corpus upon the ground that the "authority for the arrest and detention of Horn was insufficient in law, in that it appeared that the term of sentence of the said Horn had expired prior to the alleged breaches of the conditions of his pardon." To this judgment I applied for a writ of error, and the Supreme Court reversed the judgment of the lower court, holding that when Horn violated the terms of his conditional pardon, even though such violation occurred after the time that his sentence would have expired had he served it out, the pardon became void and he could be required to return to the penitentiary to serve out that part of his sentence which he had not served.

COMPILATION.

In compliance with Senate Concurrent Resolution No. 24 of the Session of the Legislature of 1905, requesting "the Attorney General to compile and have printed in pamphlet form all acts relating to public roads and duties of County Commissioners." I have made such compilation from the General Statutes of 1906, five hundred copies have been printed and are now in the hands of the Secretary of State.

SUPREME COURT REPORTS.

The Board of Commissioners of State Institutions are required to make all contracts for public printing and the contract between the Board and the State Printer regarding the Supreme Court reports, requires the printing and binding of two volumes each year which requirement enables me as Supreme Court Reporter to have the decisions published promptly.

Since the date of my last report I have succeeded in

getting the Supreme Court decisions published up to and including the January term, 1906. These decisions include Volumes 45, 46, 47, 48, 49, 50 and 51 of the Florida Supreme Court Reports.

SUGGESTIONS AS TO LEGISLATION.

APPEALS.

In criminal cases writs of error to the Circuit Court should be sued out within three months and the writ made returnable not more than twenty days from the date of issue.

APPEALS FROM INFERIOR COURTS.

Appeals from inferior courts to the Circuit Courts should be effected by filing in the Circuit Court a petition for certiorari, to be allowed by the Circuit Judge upon terms to be imposed. The original papers in the case should be submitted and if in the opinion of the judge substantial justice has not been done, he should be empowered to order a new trial in the court from which the appeal was taken. Recommended by Judge Joseph B. Wall, of the Sixth Judicial Circuit.

ATTORNEY GENERAL'S OFFICE.

All litigation in which the State is directly interested should be conducted through this office. To that end the Attorney General should be empowered to employ an assistant, whose duty should be to have his office in the capitol building and to take charge of such litigation as the Attorney General might direct. The salary of such an assistant should be large enough to secure the services of a competent person. The clerical force in this office is sufficient to serve both the Attorney General and his assistant, should one be provided.

COURT COSTS.

The expense of procuring bonds from surety bonds in

all litigated cases should be taxed as costs in the case and charged against the party against whom the judgment is rendered.

Attorney's fees incurred by the defendant in attachment cases should be allowed against the plaintiff when he fails to sustain his attachment.

CORPORATIONS.

Foreign corporations should be required, before they are permitted to do business in this State, to file in the office of the Secretary of State certified copies of their charters, and obtain certificates from the Secretary of State that such requirement has been complied with.

EMINENT DOMAIN.

Greater protection should be given the citizen in the matter of the exercise by corporations of the power of eminent domain. He should be permitted to question the pruposes for which the property is sought to be subjected, and the necessity for so subjecting it. He should be al-allowed a supersedeas on appeal and the judgment of the court should be binding alike upon the petitioner as upon the citizen.

GRAND JURIES.

The foreman of the Grand Jury should be appointed by the judge. Recommended by Judge Joseph B. Wall, of the Sixth Judicial Circuit.

INSURANCE.

The large amount of money paid out by the citizens of this State yearly on account of insurance, both life and fire, seems to make the suggestion timely that a Bureau of Insurance should be established. There may be companies doing business in this State, or who may hereafter seek this field for their operations which are financially unsafe, and the people of this State should be protected against them. The cost of maintaining this bureau could be easily met by the tax upon the insurance companies.. It would be nearly if not quite self-sustaining. This bu-

reau should be empowered to employ such acturial assistance as may be necessary to discover the exact financial codnition of each company seeking to transact business in this State, and it should have the power to decline to issue a certificate of authority to any company whom it might deem unreliable.

NEGLIGENCE.

A cause of action should be held to exist against any person, co-partnership, steam or electric railway companies or other corporations, except municipal corporations, in favor of any employee who shall sustain personal injuries while in the service of such person, co-partnership, etc., whenever such injury is caused by defective machinery, negligence of co-employee or obedience to any rule, instruction or command from one in superior authority. If the injury is the result partly of the negligence of the injured party and partly of the negligence of the employee the damages should be diminished in proportion to the amount of default which may be attributable to the injured person.

TAXATION.

Notice of application for tax deed should embrace but one certificate. The statute is not clear upon this subject.

Tax collectors should be required to furnish non-residents with notice, by mail, of the amount of taxes due for the current year upon the property of such non-residents not later than January 1st of each year.

I have arranged under different headings in this report a detailed statement of the transactions of this office. I have endeavored to give a brief outline of the civil and criminal cases, including Quo Warranto, Mandamus and Injunction.

Under the head of reports from State Attorneys and Solicitors of the Criminal Courts of Record, I have arranged tables showing by counties the criminal prosecu-

tions and convictions, the color and sex of the defendants and the name of the offense charged against them.

The official opinions rendered by me during the past two years and some of the unofficiail letters written by me during that time I have included in this report.

The House of Representatives of the Session of 1905 appointed a committee on State Institutions to whom was referred House Resolution No. 81, relating to the subject of the hire of State convicts and setting out that the lessee of the State convicts for the four years ending January 1st, 1905, failed to pay the pro rata part of the contract price per capita on convicts while confined in the hospital located near Ocala, such pro rata part being deducted on account of the convicts being confined in the hospital. The Committee on State Institutions submitted its report, which may be found on page 1902 of the House Journal for 1905. The committee recommended that the Attorney General be instructed to investigate the matter and if possible recover the amount and place it in the State treasury. In a communication from me to the speaker of the House of Representatives, which may be found on pages 2415 and 2416, of the House Journal for 1905, I gave it as my opinion that the deductions made by the Board of Commsisioners of State Institutions on account of the convicts who were in the hospital by reason of sickness and disease were made pursuant to a modification of the contract agreed upon between the Board of Commissioners of State Institutions and the lessees for reasons which the Board of Commissioners deemed most advantageous to the interest of the State and with a due regard for the humane treatment of the prisoner, and that the modifications so made were authorized by law. My subsequent investigations of this matter have confirmed me in this opinion, and, therefore, I have made no effort to institute suit against the lessees upon the contract of 1902.

Respectfully submitted.

W. H. ELLIS,
Attorney General.

QUO WARRANTO, MANDAMUS AND INJUNCTION.

Authority was given by the Attorney General to the parties whose names are mentioned below to institute proceedings in the name of the State, in Quo Warranto, Mandamus and Injunction. A short statement of the purpose of the suit is also given in each case.

QUO WARRANTO.

W. E. Baker, Gainesville, Florida,
February 1st, 1905.

To enquire into the authority of the Alachua County Abstract Company to exercise its right of franchise.
Judgment of ouster was granted in this case.

Treadwell & Treadwell, Arcadia, Florida,
July 8th, 1905.

To enquire into the authority of certain parties to exercise the rights of the office of Trustees for a certain Special Tax School District.
This case was adjusted without instituting the proceeding.

A. G. Hartridge, State Attorney, Jacksonville, Florida.
October 16th, 1905.

To enquire into the authority of the municipal corporation of Orange Park, Florida, to further exercise its character.
No report on this case.

A. J. Henry, Lake City, Florida,
October 28th, 1905.

To enquire into the rights of N. P. Bryan, P. K. Young, T .B. King, A. L. Brown and Nathaniel Adams, to exer-

cise the powers and discharge the duties of members of the Board of Control.

This case involved the constitutionality of Chapter 5384 of the Laws of 1905 (known as the "Buckman Bill"). The Supreme Court held the law to be valid. See State ex rel Atty. General vs. Bryan et al. 50 Fla. 293.

F. M. Hudson, Miami, Florida,
December 11th, 1905.

To enquire into the right and authority of certain persons to obstruct the public highway in St. Lucie County, and to cause such persons to remove all obstructions they may have placed across said highway

Authority withdrawn.

Avery & Avery, Pensacola, Florida,
May 28th, 1906.

To enquire into the right and authority of the Board of Pilot Commissioners of the port of Pensacola, to exercise the franchise of granting leave of absence to any pilot of the bar of Pensacola for more than seventy-two hours from said bar.

The court decided that the Pilot Commissioners have no right to grant leave of absence to pilots for a longer period than seventy-two hours.

S. Pasco, Jr., Pensacola, Florida,
August 28th, 1906.

To enquire into the authority of A. H. D'Alemberte to exercise the rights an dprivileges of a member of the City Council of the city of Pensacola.

Judgment of ouster was entered against the defendant in this case.

E. W. Davis, State Attorney, Ocala, Florida,
September 24th, 1906.

To enquire into the right of the Ocala Ice and Fuel Company to exercise certain franchises.
No report on this case.

Avery & Avery, Pensacola, Flroida,
November 8th, 1906.

To enquire into the authority by which Frank M. Dunn, holds and occupies the position of pilot at the bar of Pensacola.
This case has not been disposed of.

MANDAMUS.

Maxwell & Reaves, Pensacola, Florida,
April 18, 1905.

To compel the County Commissioners of Holmes County to canvas vote for County Site.

Peremptory writ of mandamus was issued in this case.

Price & Watson and W. W. Flournoy, Marianna, Fla.,
April 25th, 1905.

To compel the County Commissioners and other officers of Holmes County to transfer the public records and documents of said county from Bonifay to Westville in said county.

This proceeding was not instituted.

Maxwell & Reaves, Pensacola, Florida,
March 1st, 1905. . .

To enjoin Stearns, Culver Co., from closing certain streets in Bagdad, Florida.

Temporary injunction granted in this case.

James E. Anderson and D. L. Gaulding, Ft. Pierce, Fla.,
November 3rd, 1905.

To enjoin certain persons from interfering with the riparian rights on Indian river, at Jensen, St. Lucie County, which rights are enjoyed by the public.

This case was adjusted by the parties interested.

Sullivan & Sullivan, Pensacola, Florida,
November 7th, 1906.

To enjoin the Florida and Alabama Land Company from obstructing navigation on the waters of Pensacola Bay.

This case has not been disposed of.

CIVIL CASES.

Louisville and Nashville Railroad Company

Vs.

Railroad Commissioners of the State of Florida.

This case was instituted in 1904 by the complainant to restrain the enforcement of an order made by the Railroad Commissioners, prescribing a three-cent passenger rate over its line of road in Florida. This suit is still pending in the United States Circuit Court for the Northern District of Florida.

Railroad Commissioners of the State of Florida,

Vs.

Louisville & Nashville Railroad Company.

This case was instituted by the complainant to recover a penalty imposed by the Railroad Commissioners for a violation and disregard of Chapter 4700, Laws of Florida, and Rule 3 of the Rules governing the transportation of freight by common carriers in this State, as prescribed by the Railroad Commissioners. This case was determined in favor of the railroad company. 51 Florida 311.

Railroad Commissioners of the State of Florida,

Vs.

The Atlantic Coast Line Railroad Company.

This case was instituted by the complainant to compel the defendant railroad company to put in operation the rate of freight prescribed by the Commissieners for the transportation of phosphate from points in Florida to points within the State of Florida. The Supreme Court gave judgment in favor of the complainant, and the defendants took an appeal to the United States Supreme Court, which court has recently affirmed the decision of the Supreme Court of this State. 48 Florida 147.

Railroad Commissioners of the State of Florida,

Vs.

Seaboard Air Line Railway.

This case was instituted by the complainant to compel the defendant railroad company to put in operation the rate of freight prescribed by the Commissioners for the transportation of phosphate from points in Florida to points within the State of Florida. The Supreme Court of Florida gave judgment in favor of the complainant, and the defendant took an appeal to the United States Supreme Court, which court has recently affirmed the decision of the Supreme Court of this State. 48 Fla. 150. There was another suit against the same defendants cov-

ering the Florida West Shore Railway, branch involving the same question, which was determined in the same manner.

Louisville & Nashville Railroad Company.

Vs.

Railroad Commissioners of the State of Florida.

This case was instituted by the complainant to enjoin and restrain the enforcement and continuance of orders No. 65, 67 and 72 as made by the Commissioners. This suit is now pending in the United States Circuit Court for the Northern District of Florida.

The following cases involve the same questions as contained in the foregoing case; all are now pending in the same court.

Atlantic Coast Line Railroad Company,

Vs.

Railroad Commissioners of the State of Florida.

Seaboard Air Line Railway Company,

Vs.

Railroad Commissioners of the State of Florida.

Georgia Southern & Florida Railroad Co.,

Vs.

Railroad Commissioners of the State of Florida.

Southern States Land and Timber Company,

Vs.

N. B. Broward et al. (Board of Drainage Commissioners.)

This case was instituted by the complainant to restrain the collection of an acreage tax levied in accordance with Chapter 5377, Laws of Florida. This suit is pending in the United States Circuit Court for the Southern District of Florida.

The following cases involve the same questions as contained in the foregoing case; all are now pending in the same court:

Florida East Coast Railway Company,

Vs.

N.B. Broward et al. (Board of Drainage Commissioners.)

Boston & Florida Atlantic Coast Land Company,

Vs.

N.B. Broward et al. (Boar dof Drainage Commissioners.)

The Florida Cypress Company,

Vs.

N.B. Broward et al. (Board of Drainage Commissioners.)

The Model Land Company,

Vs.

N.B. Broward et al. (Board of Drainage Commissioners.)

Empire Land Company et al.,

Vs.

N.B. Broward et al. (Board of Drainage Commissioners.)

Wisner Land Company,

Vs.

Trustees Internal Improvement Fund.

This case was instituted by the complainant to restrain the Trustees from selling or offering for sale certain lands, claimed as being due to certain railroad companies on account of land grants made to said certain railroad companies by the Legislature of Florida, which lands claiming to be due amount in the aggregate to about 929,-520 acres, and in which the Wisner Land Company claims to own all right and interest. This suit is pending in the United States Circuit Court for the Southern District of Florida.

Louisville & Nashville Railroad Company,

Vs.

Trustees Internal Improvement Fund.

This case was instituted by the complainant to require the Trustees to convey to said complainant 108,534.52 acres of land, claimed as a part of the land still due said complainant under certain land grants made by the Legislature of the State of Florida. This suit is pending in the United States Circuit Court for the Northern District of Florida.

Louisville & Nashville Railroad Co.,

Vs.

Trustees, Internal Improvement Fund.

This case was instituted by the complainant to require the Trustees to convey to said complainant, or hold as trustee for said complainant 1,447,321 acres of land, the same being the total balance of lands claimed by said complainant under the land grant of the Legislature of Florida. This suit is still pending in the United States Circuit Court for the Northern District of Florida.

Tallahassee Southeastern Railway Company,

Vs.

Trustees Internal Improvement Fund.

This case was instituted by the complainant to require the Trustees to pay to said complainant the proceeds of the sale of certain lands amounting to 110,000 acres, located in Taylor and Lafayette counties, claimed by said complainant to have been due to it under a land grant made by the Legislature of the State of Florida. This suit is now pending in the Circuit Court for Leon County.

State ex rel, Railroad Commissioners,

Vs.

Seaboard Air Line Railway.

This case was instituted by the complainant to recover a penalty imposed by the Railroad Commissioners for a

violation and disregard of Chapter 4700, Laws of Florida, and Rule 3 of the Rules governing the transportation of freight by common carriers in this State, as prescribed by the Railroad Commissioners. This suit is now pending in the Circuit Court for Leon County.

Rachel M. C. Gaillard et al.

Vs.

Geo. Lewis, as Executor, and N. B. Broward, Governor et al. ..

This case was instituted by the complainants filing a bill in equity, praying that the trust created by the will of James D. Westcott for the benefit of the West Florida Seminary be decreed by the court to have ceased and determined, and that upon the passage and approval of Chapter 5384, Laws of Florida, the property held by said defendant, George Lewis, as Trustee, did pass to the heirs and distributees of said James D. Westcott or of his estate; and that the defendants be enjoined from disposing of or in any way using any of said property during the pendency of this suit. This case is still pending in the Circuit Court for Leon County.

Colonial Trust Company,

Vs.

Florida East Coast, Ry. Co., Jefferson B. Browne, R Hudson Burr, and John L. Morgan, as Railroad Commissioners of Florida; W. H. Ellis, Attorney General; A. G. Hartridge, State Attorney; Benj. P. Calhoun. State Attorney, and John C. Jones, State Attorney.

This case was instituted by the complainants to enjoin the defendant, the Florida East Coast Railway Company, from putting into operation a three-cent per mile passenger rate over its lines of railroad in Florida, and to restrain the Railroad Commissioners from enforcing such rates or attempting to enforce such rates, which they had prescribed and ordered put into operation. The Florida East Coast Railway Company has filed a cross bill in this case to restrain the enforcing and putting

into effect certain rates, orders and regulations prescribed by the Railroad Commissioners. This suit is now pending in the United States Circuit Court for the Southern District of Florida.

State ex rel Railroad Commissioners,

Vs.

Seaboard Air Line Railway, a Corporation.

This case was instituted by the complainants to recover a penalty imposed by the Railroad Commissioners for a violation and disregard of Chapter 4700, Laws of Florida, and Rule 3 of the Rules governing the transportation of freight by common carriers in this State, as prescribed by the Railroad Commissioners. This suit is now pending in the Circuit Court for Leon County.

Florida Railway, a Corporation,

Vs.

A. C. Croom, as Comptroller, et al.

This case was brought by the complainant to restrain the collection of taxes assessed against the properties of said complainant in this State.

The amount involved is the collection of taxes on $236,755.00 worth of property. This suit is now pending in the Circuit Court for Suwannee County.

East Coast Railway Company

Vs.

Trustees Internal Improvement Fund.

This case was instituted by the complainant filing a bill in chancery in the Circuit Court in and for Leon County, praying for a decree directing the Trustees to deed to the railroad company two million and forty thousand acres of land, claimed under legislative land grant. This suit is now pending in the Circuit Court for Leon County.

Railroad Commissioners, State of Florida,

Vs.

Atlantic Coast Line Railroad Company.

This case was instituted by the complainant filing a petition for mandamus in the Supreme Court to require the railroad company to transport and distribute between its stations, on and along its lines of railroad in this State for any and all telegraph and telephone companies, their men, wire, poles and other material for the erection, maintenance, operation, repair, construction and reconstruction of their lines of wire, etc. See 51 Florida 543.

CRIMINAL CASES DISPOSED OF.

W. L. Taylor vs. The State of Florida, January term 1904; offense, assault with intent to murder; Circuit Court, Leon County. Disposition, affirmed April 12, 1905. 49 Fla. 69.

Simon Reyes vs. The State of Florida, June term 1904; offense, murder; Circuit Court, Munroe County. Disposition, affirmed March 21, 1905. 49 Fla. 17.

A. J. Wooldridge vs. The State of Florida, June term 1904; offense, forgery; Circuit Court, Jackson County. Disposition, affirmed February 14, 1906. 49 Fla. 137.

James E. Starke vs The State of Florida, June term 1904; offense, murder in first degree; Circuit Court, Duval County. Disposition, affirmed January 17, 1905. 49 Fla. 41.

Loren Snelling vs. The State of Florida, June term 1904; offense, murder in first degree; Circuit Court, Jackson County. Disposition, affirmed January 24, 1905. 49 Fla. 34.

Will Tatum vs. The State of Florida, January term 1905; offense, robbery; Criminal Court of Record, Escambia County. Disposition, affirmed May 2, 1905. 49 Fla. 67.

Shadrick Bardwell vs. The State of Florida, January term 1905; offense, assault with intent to murder; Criminal Court of Record, Escambia County. Disposition, affirmed May 2, 1905. 49 Fla. 1.

Alex Webster vs. The State of Florida, January term 1905; offense, murder in first degree; Circuit Court, Bradford County. Disposition, affirmed May 2, 1905. 49 Fla. 131.

Willie Stafford vs. The State of Florida, January term 1905; offense, manslaughter; Circuit Court, Holmes County. Disposition, affirmed July 11, 1905. 50 Fla. 134.

Belle Thomas, alias Bill Manning, vs. The State of Florida, January term, 1905; offense, murder; Circuit Court, Holmes County. Disposition, affirmed May 2, 1905. 49 Fla. 123.

Sam Jackson, et al. vs. The State of Florida, January term 1905; offense, breaking and entering a building, etc.; Circuit Court, Columbia County. Disposition, affirmed May 2, 1905. 49 Fla. 3.

Meridth Jordon vs. The State of Florida, January term 1905; offense, assault with intent to murder; Circuit Court, Walton County. Disposition, affirmed July 26, 1905. 50 Fla. 94.

Joe Dickens vs. The State of Florida, January term 1905; offense, murder; Circuit Court, Jackson County. Disposition, affirmed June 21, 1905. 50 Fla. 17.

Samuel Walden vs. The State of Florida, January term 1905; offense, having carnal intercourse with an unmarried female; Criminal Court of Record, Orange County. Disposition, dismissed July 26, 1905. 50 Fla. 151.

Remington Smith vs. The State of Florida, January term 1905; offense, murder; Circuit Court, Wakulla County. Disposition, affirmed May 2, 1905. 50 Fla. 33.

A. D. Marlow vs. The State of Florida, January term 1905; offense, murder; Circuit Court, Marion County. Disposition, affirmed May 23, 1906. 49 Fla. 7.

William Cook vs. The State of Florida, January term, 1905; offense, assault with intent to murder; Circuit Court, Nassau County. Disposition, dismissed July 25, 1905. 50 Fla. 624.

Joseph Vickery vs. The State of Florida, January term 1905; offense, murder; Circuit Court, Escambia County. Disposition, reversed June 21, 1905. 50 Fla. 144.

Charlie Jones vs. The State of Florida, January term 1905; offense, uttering a forgery; Circuit Court, Columbia County. Disposition, affirmed April 18, 1905. 49 Fla. 408.

Hiram J. Hampton vs. The State of Florida, January term 1905; offense, manslaughter; Criminal Court of

Record, Hillsborough County. Disposition, reversed July 27, 1905. 50 Fla. 55.

Jacob Hogan vs. The State of Florida, June term 1905; offense, rape; Circuit Court, Walton County. Disposition, reversed, October 24, 1905. 50 Fla. 86.

Lowe Goode vs. The State of Florida, June term 1905; offense, violating local option law; Circuit Court, Walton County. Disposition, affirmed October 24, 1905. 50 Fla. 45.

Mamie Kinchien vs. The State of Florida, June term 1905; offense, arson; Circuit Court, Walton County. Disposition, affirmed October 24, 1906. 50 Fla. 102.

Urbie Melbourne vs. The State of Florida, June term 1905; offense, murder; Circuit Court, Munroe County. Disposition, dismissed November 23, 1905. 50 Fla. 113.

Tom Spires vs. The State of Florida, June term 1905; offense, rape; Circuit Court, Jackson County. Disposition, affirmed July 26, 1905. 50 Fla. 121.

Sam Caesar vs. The State of Florida, June term 1905; offense, violating local option law; Circuit Court, Columbia County. Disposition, affirmed October 24, 1905. 50 Fla. 1.

Sam Hunter vs. The State of Florida, June term 1905; offense, manslaughter; Circuit Court, Jackson County. Disposition, dismissed August 11, 1905. 50 Fla. 624.

Fabe Robinson vs. The State of Florida, June term 1905; offense, manslaughter; Circuit Court, Jackson County. Disposition, affirmed October 24, 1905. 50 Fla. 115.

Edward Lamb vs. The State of Florida, January term 1905; offense, murder; Circuit Court, Manatee County. Disposition, affirmed June 21, 1905. 50 Fla. 106.

Will Massey vs. The State of Florida, June term 1905; offense, violating local option law; Circuit Court, Hamilton County. Disposition, reversed December 19, 1905. 50 Fla. 109.

George Caldwell and Nelson Larkin vs. The State of Florida, June term 1905; offense, murder; Circuit Court, Leon County. Disposition, affirmed July 26, 1905. 50 Fla. 4.

R. H. Houston vs. The State of Florida, June term 1905; offense, murder; Circuit Court, Hillsborough County. Disposition, affirmed October 24, 1905. 50 Fla. 90.

A. C. Teston vs. The State of Florida, June term, 1905; offense, embezzlement; Criminal Court, Hillsborough County. Disposition, reversed December 19, 1905. 50 Fla. 138.

Paul Wilson vs. The State of Florida, June term, 1905; offense, rape; Circuit Court, Hillsborough County. Disposition, affirmed, October 24, 1905. 50 Fla. 164.

R. F. Colson vs. The State, January term, 1905; offense, murder in second degree; Circuit Court, Columbia County. Disposition, affirmed, February 7, 1906. 51 Fla. 19.

Duke Douberly vs The State of Florida, January term, 1906; offense, larceny; Circuit Court, Columbia County. Disposition, affirmed March 6, 1906. 51 Fla. 41.

Burt Freeman vs The State of Florida, June term, 1905; offense, aggravated assault; Circuit Court, Dade County. Disposition, affirmed December 19, 1905. 50 Fla. 38.

Urbie Melbourne vs. The State of Florida, January term, 1906; offense, murder; Cicruit Court, Monroe County. Disposition, reversed February 13, 1906. 51 Fla. 69.

Raymond Strickland vs. The State of Florida, January term, 1906; offense, making false statement in writing to obtain credit; Circuit Court, DeSoto County. Disposition, reversed February 13, 1906. 51 Fla. 129.

J. Henry Baker vs. The State of Florida, January term, 1906; offense, murder; Circuit Court, Madison County. Disposition, affirmed, March 6, 1906. 51 Fla. 1.

John Russell, alias "Humpie," vs The State of Florida, January term, 1906; offense, forgery and uttering a forged instrument; Circuit Court, Jackson County. Disposition, reversed March 6, 1906. 51 Fla. 124.

Elijah Davis vs The State of Florida, January term, 1906; offense, breaking and entering; Circuit Court, Calhoun County. Disposition, reversed February 13, 1906. 51 Fla. 37.

Charles Cook vs. The State of Florida, January term, 1906; offense, obtaining goods under false promises; Circuit Court, Sumter County. Disposition, reversed February 21, 1906. 51 Fla. 36.

Ross Lamps vs. The State of Florida, January term, 1906; offense, burglary; Criminal Court of Record, Orange County. Disposition, affirmed February 13, 1906. 51 Fla., 51.

John W. Myers vs The State of Florida, January term, 1906; Circuit Court, Suwannee County. Disposition, dismissed October 9, 1906. 52 Fla.

John J. Ward vs The State of Florida, January term, 1906; offense, violating local option law; Circuit Court, Walton County. Disposition, affirmed February 13, 1906. 51 Fla. 133.

Arch Odom vs. The State of Florida, January term, 1906; offense, assault with intent to murder; Circuit Court, Walton County. Disposition, affirmed February 13, 1906. 51 Fla. 91.

James B. Leaptrot vs. The State of Florida, January term, 1906; offense, perjury; Criminal Court of Record, Duval County. Disposition, reversed March 1, 1906. 51 Fla. 57.

W. T. Clements vs. The State of Florida, January term, 1906; offense, assault with intent to murder; Criminal Court of Record, Duval County. Disposition, affirmed February 21, 1906. 51 Fla. 6.

Lizzie Washington vs. The State of Florida, January term 1906; offense, larceny and receiving stolen goods; Criminal Court of Record, Duval County. Disposition, affirmed March 13, 1906. 51 Fla. 137.

Neal Johnson, et al. ve The State of Florida, January term, 1906; offense, obstructing an officer in the discharge of his duty; Circuit Court, Jackson County. Disposition, affirmed March 20, 1906. 51 Fla. 44.

Jim Morgan, alias Stephney Porter, vs. The State of Florida, January term, 1906; offense, assault with intent to rape; Circuit Court, Hamilton County. Disposition, reversed March 13, 1906. 51 Fla. 76.

Tobe Jackson vs. The State of Florida, January term, 1906; offense, murder; Circuit Court, Washington County. Disposition, dismissed January 26, 1906. 51 Fla. 647.

J. T. Pittman vs. The State of Florida, January term, 1906; offense, forgery and uttering forged instrument; Circuit Court, Holmes County. Disposition, affirmed April 10, 1906. 51 Fla. 94.

Joseph A. Barber vs. The State of Florida, June term, 1906; offense, assault with intent to murder; Circuit Court, Osceola County. Disposition, affirmed July 31, 1906. 42. So. Rep. 886.

Dan B. Keigans vs. The State of Florida, June term,

1906; offense, murder; Circuit Court, Pasco County. Disposition, reversed, August 3, 1906. 41 So. Rep. 886.

Sarah Newton, alias Sarah Van Dyke, and James Newton vs. The State of Florida; January term, 1906; offense, murder; Circuit Court, Volusia County. Disposition, reversed April 25, 1906. 51 Fla., 82.

John B. Vaughn vs. The State of Florida; June term, 1906; offense, manslaughter; Criminal Court of Record, Escambia County. Dispotion, reversed August 3, 1906. 41 So. Rep. 881.

E. G. Irvin, alias Mose Irvin, vs. The State of Florida, June term, 1906; offense, keeping gaming hosue; Criminal Court of Record, Hillsborough County. Disposition, reversed, July 24, 1906. 41 So. Rep. 785.

Eloy Blanton vs. The State of Florida; June term, 1906; offense, murder in second degree; Circuit Court, Madison County. Disposition, affirmed July 24, 1906. 41 So. Rep. 789.

Tom Hisler vs The State of Florida, June term, 1906; offense, murder; Circuit Court, Duval County. Disposition, reversed December 21, 1906. 52 Fla.

R. B. Stutts vs The State of Florida, June term, 1906; offense, falsely and maliciously imputing want of chastity to an unmarried woman; Circuit Court, Calhoun County. Disposition, affirmed July 31, 1906. 42 So. Rep. 51.

James L. Maloy vs. The State of Florida, June term, 1906; offense, murder; Circuit Court, Santa Rosa County. Disposition, affirmed July 24, 1906. 41 So. Rep. 791.

Harry Hopkins vs. The State of Florida, June term, 1906; offense, larceny and embezzlement; Circuit Court, St. Johns County. Disposition, affirmed August 3, 1906. 52 Fla.

Charles Daniels vs. The State of Florida, June term, 1906; offense, murder; Circuit Court, DeSoto County. Disposition, affirmed July 3, 1906. 41 So. Rep. 609.

Willliam Allen vs. The State of Florida, June term, 1906; offense, forgery; Criminal Court of Record, Duval County. Disposition reversed, July 24, 1906. 41 So. Rep. 593.

Darnell Hiars vs. The State of Florida, June term 1906; offense, violating local option law; Circuit Court, Suwannee County. Disposition, reversed, July 31, 1906. 41 So. Rep. 881.

Richard Reynolds vs. The State of Florida, June term, 1906; offense, violating local option law; Circuit Court, Bradford County. Disposition affirmed November 13, 1906. 42 So. Rep. 373.

J. Shaw Thompson vs. The State of Florida, June term, 1906; offense, manslaughter; Circuit Court, Marion County. Disposition, remanded for proper sentence July 31, 1906. 41 So. Rep. 899.

HABEAS CORPUS CASES.

William Schiller vs. The State of Florida, January term, 1905; Circuit Court, Duval County. Disposition, affirmed May 24, 1905. 49 Fla. 25.

The State of Florida ex rel. Frank S. Porter vs. W. D. Vinzant, Chief of Police, January term, 1905; Circuit Court, Duval County. Disposition, affirmed May 9, 1905. 49 Fla. 213.

William C. West vs. The State of Florida, June term, 1905; Circuit Court, Duval County. Disposition, affirmed February 6, 1906. 51 Fla. 275.

John Hanley vs. The State of Florida, June term 1905; Circuit Court, Duval County. Disposition, affirmed July 29, 1905. 50 Fla. 82.

Edward Alvarez vs. The State of Florida, June term, 1905; Circuit Court, Bradford County. Disposition, reversed October 24, 1905. 50 Fla. 24.

C. Ferlita vs. Jones, Chief of Police, June term, 1905; Circuit Court, Hillsborough County. Disposition, affrmed November 28, 1905. 50 Fla. 218.

R. J. & W. C. Knight vs. Geo. R. Carter, Sheriff, June term, 1906; Circuit Court, Citrus County. Disposition, reversed July 26, 1906. 41 So. Rep. 787.

L. B. Crooms vs. C. Fred Shadd, Marshal, June term, 1906; Circuit Court, Escambia County. Disposition affirmed, Feb. 6, 1906, 51 Fla. 168.

The State of Florida vs. S. Peter Horne, June term, 1906; Circuit Court, Gadsden County. Disposition, reversed November 27, 1906. 42 So. Rep. 388.

Walter Nichols vs. The State of Florida, June term, 1906; Circuit Court, Jackson County. Disposition affirmed November 3, 1906. 52 Fla....

OFFICIAL OPINIONS.

The following are the official written opinions given by this office from January 1, 1905, to December 31, 1906:

ATTORNEY'S FEES—F. C. & P. R. R. TAX CASE.

Tallahassee, Fla., January 21, 1905.

Hon. A. C. Croom,
Comptroller,

Dear Sir:

In reference to the matter of the payment of the amount due to the heirs of General E. A. Perry, of his part of the fee for the collection of the Railroad Taxes for the years 1879-80 and 81, I have to say that the form of receipt which you have submitted for my consideration and which is to be signed by each one of the heirs, includ-in gthe widow of General Perry, is quite sufficient.

Yours truly, W. H. ELLIS,
Attorney General.

MANDAMUS.

Tallahassee, Fla. ,January 21, 1905.

Hon. A. C. Croom,
Comptroller,

Dear Sir:

Yours of recent date enclosing a letter from Honorable L. J. Reeves, relating to Mr. Blount's intention to apply to the Supreme Court for an Alternative writ of Mandamus against the Tax Assessor of Escambia County and suggesting that you ask the Supreme Court to allow you a hearing before the issuing of the writ, has received my attention.

There is no practice which justifies one in claiming the right to be heard upon an application for an Alternative writ of Mandamus; however, Messrs. Maxwell & Reeves may appear before the court when Mr. Blount makes application for the writ and ask the court for leave to be heard. I should think that inasmuch as Mr. Blount

and Messrs. Maxwell & Reeves live so far away from Tallahassee, where the application must be heard if made before the Supreme Court, that they could submit to the court at once all of the pleadings in the case.

I herewith return letter of Honorable L. J. Reeves.

Yours truly, W. H. ELLIS,
Attorney General.

CORPORATIONS.

Tallahassee, Fla., January 24, 1905.

Hon. H. Clay Crawford,
Secretary of State,
Tallahassee, Fla.

Dear Sir:

Your oral request of a few days since for my opinion regarding the dissolution of the corporation known as the "Madison Ginning Company," has been duly considered by me.

Sections 2154-55-56-57, provide for the dissolution of corporations and prescribe the method which they should follow. "When a majority or more of the stockholders of a corporation desire to close their concerns, they may apply by petition to the Circuit Court, setting forth the grounds of their application, and the court on due notice by publication for a reasonable period given to all parties interested may hear the matter." No such steps seem to have been taken by the Madison Ginning Company.

I herewith return the letter of Mr. McCall and the resolutions adopted by the company.

Yours very truly,
W. H. ELLIS, Attorney General.

Tallahassee, Fla., January 25, 1905.

Hon. W. V. Knott,
State Treasurer,
Tallahassee, Fla.

Dear Sir:—

I am in receipt of your letter of the 16th, enclosing a

letter from I. L. Purcell, Pensacola, Fla., and requesting me to "advise him direct."

The letter enclosed states that the "Union Aid Association of America with headquarters at Jacksonville, Fla., desires to change its principal place of business." The writer then requests that you inform him whether an amendment of the charter would be necessary to authorize this change of the company's home office.

The above communication from I. L. Purcell, to you is not of an official character, that is to say, the duties of your office do not require you to furnish opinions upon propositions of law.

The Attorney General is required to furnish to the State Treasurer, when so requested in writing, his opinion and legal advice in writing on any matter touching the Treasurer's official duties. This requirement of course, does not extend to the matter embraced in the letter to which reference is above made.

I herewith return the letter of I. L. Purcll.

Yours truly,

W. H. ELLIS,
Attorney General.

INSURANCE COMPANIES.

Tallahassee, Fla., Jan. 24, 1905.

Hon. W. V. Knott,
State Treasurer,
Tallahassee, Fla.

Dear Sir:—

I am in receipt of your letter of January 18th, asking me if, "Insurance Companies operating in the State under Chapter 5222, Laws of Florida, are required to pay the 2 per cent Premium Tax."

Chapter 5222 by legislative provision, went into effect January 1st, 1904. Chapter 5106 went into effect sixty days from the adjournment of the Legislature.

It is my opinion that Chapter 5222 removes the business of "Sick and Funeral Benefit Insurance" from the provisions of Section 22 of Chapter 5106.

The purpose of the Legislature in this regard is very clearly expressed in Section 1, of Chapter 5222, which provides that any company or corporation may transact the business of "Sick or Benefit Insurance," upon compliance with the "provisions of this Act." The tax imposed by the latter act is set out in Section four, which does not require the payment of 2 per cent tax upon premiums.

Yours truly,

W. H. ELLIS,
Attorney General.

REQUISITIONS FOR FUGITIVES FROM JUSTICE.

Tallahassee, Fla., Jan. 28, 1905.

Sir:—

Pursuant to your request transmitted this morning through Mr. C. H. Dickinson, to examine and report to you upon the sufficiency of the requisitions and documents accompanying same, made by his Excellency, the Governor of Georgia, upon you for the delivery of certain persons as fugitives from justice, I beg leave to submit the following views:

Section 3002, of the Revised Statutes, provides for the extradition of fugitives from justice and prescribes the manner in which the demand of the executive of another State shall be made, by referring to the Act of Congress, approved February 12th, 1793.

In order that your Excellency might lawfully order the arrest of the persons named and cause them to be delivered to the agent of the executive authority making such demand:

1st. The person must be demanded by the executive of the State from which he fled;

2nd. He must be a fugitive from justice;

3rd. The demand must be acompanied by a copy of an indictment found ,or an affidavit made before a magistrate of the State, charging the person demanded with having committed treason, felony, or other crime;

4th. The copy of the indictment or affidavit must be certified as authentic by the Executive making the demand.

All of the prerequisites to a demand, such as is contemplated by the Act of Congress to which reference is made, have been complied with by his Excellency, the Governor of Georgia.

The questions which your Excellency must determine, are:

1st. Is the person named in the particular demand a fugitive from justice?

2nd. Is the indictment sufficient in its terms and allegations to charge the person named, with treason, felony or other crime under the laws of Georgia?

As to the first proposition, there is sufficient evidence before your Excellency, in the form of the petition of the Solicitor General, of the Brunswick Circuit, and the affidavits attached to justify a conclusion upon your part, that the person named in each demand is a fugitive from justice.

In the case of Ex parte Reggel, 114 U. S. 642, Mr. Justice Harlan delivering the opinion of the court, said "We can not say that the Governor of Utah erred in regarding it as a statement of a fact, and as sufficient evidence that appellant had fled from the State in which he stood charged with the commission of a particular crime, on a named day at the city and county of Philadelphia; especially as no opposing evidence was brought to his attention."

The affidavit in that case was made by Frederick Gentner, but the official character of the person before who mthe affidavit was made was not clear. The affidavit stated that Reggel "is a fugitive from justice," and the contention was, that it stated a legal conclusion instead of a fact.

The affidavits in the cases submitted are made before S. W. Register, who describes himself as clerk of the Superior Court, but the seal of the court is not affixed to the Clerk's jurat. This defect, however, I do not regard as material, because the requisition amounts to an authentication of the affidavit, and because the sufficiency of the evidence submitted to your Excellency upon the question is within your discretion to determine.

The next question to settle is: Should your Excellency determine the question of whether the indictment in the particular case sufficiently charges, or charges at all, the commission of any crime. This is a question of some difficulty and the authorities, so far as I have found them, are not in harmony. Upon several propositions there is practical unanimity: That the Executive of the State of whom the fugitive is demanded, will not inquire into the actual guilt or innocence of the demanded person, or as to possible technical defects in an indictment, or as to the motives which have actuated the authorities in obtaining the indictment; but the question of whether your Excellency should decide whether the indictment sufficiently charges or charges at all a crime, under the laws of Georgia, is one of some doubt. In the case of Roberts vs. Rielly, 116 U. S. 80, the court said: "The objections taken in this proceeding to the sufficiency of the indictment, which were overruled both in the District and Circuit Courts, and which are still relied on here, are not well founded. The indictment itself is certified itself is certified by the Governor of New York, to be authentic and to be duly authenticated, which is all that is required by the Act of Congress." To the same effect it was held in Ex Parte Reggel, 114 U. S. 642, but in each case a crime was charged under the law of the State making the demand. In Davis' case 122 Mass., 324, the Governor of Vermont made demand of the Governor of Massachusetts for a fugitive from justice, Davis by name, who insisted that the indictment attached to the requisition of the Executive of Vermont, "charged no offense known to the laws of Vermont." The court held, that when an indictment appears to have been returned by a grand jury and is certified as authentic by the Governor of the other State and substantially charges a crime, this court can not on habeas corpus discharge the prisoner because of formal defects." In Maine the Judges of the Supreme Court held that: "Being indicted in such state," the fraud set forth, "may be presumed to be there regarded as a crime," and in the matter of Briscoe, 57 How. Pr. 422, substantially the same point was determined. The law is very well settled, that the sufficiency of the charge, as a matter of

technical pleading, will not be inquired into; that such question is to be tried and determined in the State in which the indictment was found.

The question of whether the indictment charges an offense under the laws of Georgia, seems to me, should be determined by the courts of that State. The authorities of the State of Georgia have undoubtedly recognized the fact, that a prosecution in each case has been lawfully commenced in that State. The executive authority of that State has complied with the requirement of the Act of Congress, and I think you would be justified in honoring the requisitions.

Respectfully,

W. H. ELLIS, Attorney General.

To His Excellency,

Hon. N. B. Broward, Governor.

BUILDING AND LOAN ASSOCIATION.

Tallahassee, Fla., Jan. 31, 1905.

Hon. A. C. Croom,

Comptroller,

Dear Sir:—

Judging from the advertisement of "The Standard Trust Company," it appears to me, that it is a Building and Loan Association. Of course, it is almost impossible from a newspaper advertisement, to judge of the character of business advertised.

I herewith return letter of Mr. Roberts.

Yours very truly,

W. H. ELLIS, Attorney General.

LICENSE.

Tallahassee, Fla., Feb. 1st, 1905.

Hon. A .C. Croom,

Comptroller,

Dear Sir:

I am in receipt of your communication of recent date enclosing letter from Honorable Henry Bilinger, County

Judge of Escambia County, and application for transfer of license.

You ask, if in my judgment, under the facts stated in Mr. Billinger's letter, the license of the Skinner Manufacturing Company is transferable. I am of the opinion that it is.

I herewith return letter of Mr. Billinger and application for transfer.

Yours truly,
W. H. ELLIS, Attorney General.

DISPOSITION OF FORFEITED BAIL BOND.

Tallahassee, Fla., Feb. 1st, 1905.

Hon. A .C. Croom,
Comptroller.

Dear Sir:

I am in receipt of your letter of recent date, enclosing letter from Honorable J. Walter Kehoe, State Attorney, relating to the collection of an appearance bond of a party who was indicted for felony and who is now a fugitive.

Mr. Kehoe asks, if an offer of compromise which has been made by the bondsmen should be submitted to you for your approval or the County Commissioners.

Chapter 5155, laws of 1903, provids "That all fines imposed under the penal laws of the State, and the proceeds of all forfeited bail bonds or recognizances shall be paid into the fine and forfeiture fund of the county in which the indictment was found, or the prosecution commenced, and judgment must be entered therefore in favor of the State for the use of the particular county."

In view of the fact that the county is alone interested in the collection of appearance bonds, in that the proceeds thereof must be covered into the county treasury, I think the matter of compromise is one which should be left to the determination of the County Commissioners.

I herewith return letter of Mr. J. Walter Kehoe.

Yours truly,
W. H. ELLIS, Attorney General.

SURPLUS AND UNDIVDED PROFITS OF BANKS, SUBJECT TO TAXATION.

Tallahassee, Fla., Feb. 1st, 1905.

Hon. A .C. Croom,
Comptroller.

Dear Sir:

Your letter of recent date enclosing communication from Mr. R. J. Patterson, Tax Assessor of Madison County, has been received. Mr. Patterson desires to know, if "surplus and undivided profits of banks are subject to taxes."

Section 1, of Chapter 4322, laws of 1895, provides "that all property, real and personal, in this State, not hereby expressly exempt therefrom, shal be subject to taxation in the manner provided by law."

Chapter 5263, laws of 1903, provides, That the property therein described shall be exempt from taxation. "Surplus and undivided profits" of banks are not described in the latter act as exempt from taxation.

I am of the opinion, therefore, that such property is subject to taxation.

I herewith return letter of Mr. Patterson.

Yours very truly,
W. H. ELLIS, Attorney General.

MORTGAGES, TAXABLE.

Tallahassee, Fla., March 24, 1905.

Hon. A .C. Croom,
Comptroller.

Dear Sir:

Your letter of recent date enclosing communication from Hon. J. Turnbull, Tax Assessor, has been received.

He asks if mortgages and cotton in the bale are taxable. It is my opinion that cotton in the bale is taxable, and that the debts secured by mortgages are also taxable.

I herewith return the letter of Mr. Turnbull.

Yours very truly,
W. H. ELLIS, Attorney General.

LEGAL NOTICES.

Tallahassee, Fla., March 24, 1905.

Hon. N. B. Broward,
Governor,
Talllahassee, Fla.

Sir:

I herewith return letter of B. O. Bowden, Dade City, Florida.

No valid objection can be raised to the publication of legal notices in Mr. Bowden's paper, if it is a newspaper and distributed from Dade City, or any other point in Pasco County, if the notices referred to relate to county business. It is a matter of no importance as to where the press work on the paper is done.

Yours very truly,
W. H. ELLIS, Attorney General.

INQUEST.

Tallahassee, Fla., March 24, 1905.

Hon. N. B. Broward, Governor,
Tallahassee, Fla.

Sir:

I herewith return the letter of A. C. Stephens, Justice of the Peace at Jennings, Florida, dated March 7th, 1905.

I am of the opinion that the Justice did right in holding an inquest in the case stated by him, and the legitimate fees and expenses thereof should be paid.

Yours very truly,
W. H. ELLIS, Attorney General.

U. S. LAND, NOT SUBJECT TO TAXATION—ERRONEOUS ASSESSMENT.

Tallahassee, Fla., May 9th, 1905.

Hon. A .C. Croom,
Comptroller.
Tallahassee, Florida.

Dear Sir:

A letter from Mr. Alfred Ayer, Tax Assessor of Marion County, asking for information upon certain matters, is now before me.

He desires to know if lands which are claimed by railroad companies, the title to which is in the United States Government, are subject to taxation.

Second, whether property assessed in 1904 at nine hundred dollars, but which should have been assessed at nine thousand dollars, may be assessed in 1905 ,for the remaining eight thousand, one hundred dollars, for which it should have been assessed in 1904, in addition to its true valuation for 1905. Both of these propositions I answer in the negative.

His letter is herewith returned.

Yours truly,

W. H. ELLIS, Attorney General.

GOVERNOR MAY REQUIRE OPINION OF SUPREME COURT, UPON CERTAIN MATTERS.

Tallahassee, Fla., June 3, 1905.

Hon. N. B. Broward, Governor.

Sir:

Section 13, of Article 4, of the Constitution, provides that "the Govenor may, at any time, require the opinion of the Justices of the Supreme Court as to the interpretation of any portion of the Constitution upon any question affecting his executive powers and duties, and the Justices shall render such opinion in writing."

The communication of Mr. W. B. Dickenson, County Superintendent of Hillsborough County, requests you to ask of the Supreme Court an opinion upon the following propositions: First, "Can a Special Tax School District vote itself out of existence while in debt?" Second, "Can a Special Tax School District issue bonds for building purposes?"

The Constitutional provision referred to, I think, limits the scope of questions which the Governor may require the Supreme Court to answer. That scope is confined to the executive powers and duties of the Governor under the Constitution. The questions which Mr. Dickenson desires you to submit to the Supreme Court are without the scope of those questions which the Governor may require the Supreme Court to answer. Therefore, I am of

the opinion that the Constitution does not require the Supreme Court to answer the questions contained in Mr. Dickerson's letter, even though you should request it of them.

I herewith return letter of Mr. Dickenson.

Respectfully,
W. H. ELLIS, Attorney General.

FUNDS OF EDUCATIONAL INSTITUTIONS.

Tallahassee, Fla., June 6, 1905.

Hon. A .C. Croom,
Comptroller.
Tallahassee, Florida.

Dear Sir:

Your communication of June 3rd, asking if, in my opinion you should continue to handle the accounts of the different educational institutions of the State of Florida referred to in House Bill No. 361, introduced by Mr. Buckman, of Duval, has been received.

Section one of the act abolishes the Florida Agricultural College, known as the University of Florida; the Florida State College; the White Normal Sschool at DeFuniak Springs; the East Florida Seminary, at Gainesville; the South Florida College at Bartow, and the Florida Agricultural Institute, located in Osceola County.

Section 3, of the act provides that immediately upon the passage thereof that the trustees of the several institutions mentioned shall prepare duplicate accounts and inventories of all the property, real, personal and mixed, owned, possessed or claimed by the said institutions and shall show in detail every asset and liability, and if the institutions shall be indebted to any person or persons said report shall show in detail a true and correct statement of said indebtedness as to when created, for what, to whom due and the amount thereof.

Section 14, of the act requires the Governor of the State to select immediately upon the passage of the act, five persons to constitute the Board of Control.

Section 33, of the act provides that the Board of Control shall pay any and all items of indebtedness of the

institutions abolished under this act, after the same shall have been vouchered, audited and approved as herein before provided. The section provides that the Comptroller shall draw his warrant on the Treasurer for such indebtedness and the Treasurer shall pay the same out of any funds in his hands available for the purposes of this act.

The last section provides, that it shall take effect upon its passage and approval by the Governor. I am informed that the bill was signed yesterday, it has therefore taken effect, and, in my judgment, the duty rests upon the Board of Control to pay whatever items of indebtedness that may appear in the accounts and inventories provided in section 3, of the act, to be prepared by the Trustees of the abolished institutions.

Section 4 provides, that all continuing appropriations heretofore made to the State Institutions mentioned in section 1 of this act, or any of them, are hereby revoked.

In my opinion that section does not revoke the appropriation made by the Legisature of 1903 for the current expenses of those institutions, and, therefore, what is left in the treasury of those appropriations, is available for the payment of the indebtedness now existent against the institutions.

Yours truly,
W. H. ELLIS, Attorney General.

LEVY OF TAXES FOR COUNTY SCHOOL PURPOSES.

Tallahassee, Fla., June 13, 1905.

Hon. W. M. Holloway,
State Superintendent, Public Instruction,
Tallahassee, Florida.

Sir:

Your communication of recent date, relating to the matter of the levy of taxes for County School purposes and requesting my opinion as to the duties and powers of the Board of County Commissioners and the County Boards of Public Instruction in regard thereto has been received.

At the general election held in November, 1904, Section 8 of Article 12, of the Constitution, was amended to read as follows: "Each county shall be required to assess and collect annually for the support of public free schools therein, a tax of not less than three (3) mills, nor more than seven (7) mills on the dollar of all taxable property in the same." The amendment went into effect immediately upon its adoption ,and I think it is sef-operating in its character. That is to say, it requires no act of the Legislature to give effect to its provisions.

Section 242, of the Revised Statutes, 14th paragraph, provides, that "The Board of Public Instruction in each county shall on or before the last Monday in June of each year, I prepare an itemized estimate showing the amount of money required for the maintenance of the necessary common schools of their county for the next ensuing scholastic year, stating the amount in mills on the dollar of the taxable property of the county, which shall not be less than three nor more than five mills, and furnish a copy of the statement to the assessor of taxes of the county, and file a copy in the office of the Board of Public Instruction, and the assessor shall assess the amount so stated, and the collector shall collect the amount assessed and pay over the same monthly to the county treasurer, who is also by law school treasurer, to be used for the sole benefit of the public schools." The Act of 1891, Chapter 4012, however, amended that section so far as the same required the assessor to "assess" the amount shown by the Board of Public Instruction to be required for the necessary common schools of the county. The word "assess" as used in the fourteenth paragraph of section 242 of the Revised Statutes in the following clause: "and the assessor shall assess the amount so stated," should be interpreted to mean "levy."

The Act of 1891, Chapter 4012, required the County Commissioners of each county to levy a tax not to exceed five mills nor less than three mills on the dollar for county school purposes, and required the County School Board to estimate such tax and submit the estimate to the Board of County Commissioners for their approval or disapproval.

The effect of the act was to take the power of levying the school tax from the county assessor and vest it in the Board of County Commissioners, and to vest in the Board

of County Commissioners the discretionary power of increasing or lowering the estimate made by the school board within the three and five mill limit.

The 35 Section of Chapter 4010, Acts of 1891 ,provided that the County Commissioners shall determine the amount to be raised for all county purposes, *except for school purposes*, and shall enter upon their minutes the rate to be levied for each fund respectively, and shall ascertain the aggregate rate necessary to cover all such taxes, including such rate as may have been levied by the County Board of Education for school purposes, and report the same to assessor, etc.

In the case of State ex rel, The Board of Public Instruction of Volusia County vs. The County Commissioners of Volusia County, reported in the 28th Florida Reports, p. 793. The Supreme Court regarding the above statutes as being in pari materia held, that it was the duty of the School Board to prepare the itemized statement of the amount required for the maintenance of schools, stating the amount in mills on the dollar, and to submit that estimate to the County Commissioners tion of Chapter 4010 did not take from the County Commissioners had the power, under the tax levy act, to increase or lower the estimate so made. That the 35th Section of Chapter 4010 did not take from the County Commissioners the power to increase or low the *rate* of *taxation.*

The tax levy act of 1893, Chapter 4116 provided, "That the County Commissioners of each county shall levy a tax not to exceed five mills nor less than three mills" for county school purposes, such tax to be estimated by the County School Board. And Section 33 of Chapter 4115 provided that the "County Commissioners shall determine the amount to be raised for all county purposes and shall enter upon their minutes the rate to be levied for each fund respectively, and shall ascertain the aggregate rate necessary to cover all such taxes and report the same to the assessor," etc. There were omitted the words "Except for school purposes," and the words "Including such rate as may have been levied by the County Board of Education for School purposes." But the Supreme Court said, those words "are not used as granting power to the County School Board, but as words of reference or of description of the tax, and they

refer at least to the rate fixed for school purposes in accordance with law, that is by the School Board under the supervisory power of the County Commissioners." If they are not words granting power to the School Board, there can be no significance in the fact that they were omitted from the act of 1893 and subsequent acts; but the omission of the words "except for school purposes" leaves with the County Commissioners the power to determine the amount to be raised for all county purposes. The tax levy act of 1893 provided that the County Commissioners should levy a tax for County school purposes, and that "such tax to be estimated by the County School Board." There were omitted from the Act of 1893 the words "and submitted to the Board of County Commissioners for their approval or disapproval; and the County Commissioners shall have power to increase or lower the estimate so made within the above limits."

It seems from the enactments of 1893, that it was the legislative purpose to vest in the Board of County Commissioners the power to determine the amount to be raised for school purposes, and that an estimate should be made by the School Board, of the amount necessary for school purposes, but that from such estimate the Board of County Commissioners should determine the amount to be raised for such purpose.

The Tax Levy Act of 1903 provides that the County Commissioners shall levy a tax for school purposes. The Act of 1905 contains the same provision.

Chapter 4885, Acts of 1901 provides that the County Commissioners shall *determine* the *amount* to be raised for all county purposes and shall enter upon their minutes the *rate* to be *levied* for each fund respectively.

Now Section 32 of Chapter 4515 as amended by Chapter 4885, Acts of 1901, the Tax Levy Act of 1903, and Section 242, of the Revised Statute, being in pari materia, should be construed together.

Therefore, the County Boards of Public Instruction are required to prepare itemized estimates showing the amount of money required for the maintenance of the necessary common schools of their respective counties, for the next ensuing scholastic year, but it was evidently the purpose of the Legislature to vest in the Board of County Commissioners a discretion in the matter of de-

termining the amount to be raised for county schools and the power to make the levy necessary to produce the amount which the Board of County Commissioners may have determined to raised for that purpose.

Yours truly,
W. H. ELLIS, Attorney General.

CERTIFICATES OF TRUSTEES INTERNAL IMPROVEMENT FUND.

Tallahassee, Fla., June 14, 1905.

Hon. B. E. McLin,
Commissioner of Agriculture,
Dear Sir:

I have your letter of the 2nd enclosing letter of Mr. J. Edward Allen, attorney at law, dated May 31st, 1905, addressed to you; your letter to Mr. Allen of May 30th, 1905, and two copies of certificates as follows: One certificate to the effect that the records show that a deed numbered 1663 was issued to Thomas F. King by the Trustees of the Internal Improvement Fund of Florida, bearing date December 31st, 1860, to all of section ten in township twenty, south of range seventeen east, as is evidenced by the stub of the original entry book; the other, that the records show that a deed, numbered 2112, was issued to Thomas F. King by the Trustees of the Internal Improvement Fund of Florida, bearing date December 31st, 1860, to all of section fifteen in township twenty, south of range seventeen east, as is evidenced by the stub of the original entry book.

I concur in your views as expressed in your letter to me of June 2nd, 1904.

Mr. Allen, in his letter of May 31st, says: "I do not question the validity of the certificates. I simply desire to have them recorded and to comply with the law in doing so."

The certificates with which Mr. Allen has been furnished are not such instruments as may be recorded under the provisions of our statute, nor does the statute provide for the acknowledgement by you of the execution of such certificates. Your name and the seal of your

office is sufficient evidence of the validity of the documents.

I herewith return letter of Mr. Allen, your letter to Mr. Allen, and the two copies of certificates.

Yours truly,
W. H. ELLIS, Attorney General.

SURETY ON OFFICIAL BOND.

Tallahassee, Fla., July 15, 1905.

Hon. N. B. Broward,
Governor,
Tallahassee, Fla.

Dear Sir:

I am in receipt of your letter of this date enclosing a communication from W. A. Mitchum, of Milligan, Florida, in which he writes that he declines "To stand as surety for T. J. Mapoles for Justice of the Peace in Justice District No. 7."

You request me to advise you as to what effect the action of Mr. Mitchum has upon Mr. Mapoles' bond, and as to whether a surety on any official bond can withdraw at his own pleasure.

I assume that the bond of Mr. Mapoles, with Mr. Mitchum as surety, named the conditions required by law, and was duly executed by the principal and sureties and approved by the proper authorities. That thereupon a commission was issued to Mr. Mapoles to be Justice of the Peace.

A surety upon an official bond cannot at his pleasure denude himself of liability under his obligation. The act of Mr. Mitchum, therefore, in writing you as above stated, can have no effect upon the validity of the bond nor its enforcement against him if occasion should require.

In this connection I respectfully call your attention to Section 2 of Chapter 4413, Acts of 1895, requiring the County Commissioners of the various counties at their regular meeting in January and June of each year to examine as to the sufficiency of the bonds of county officers and report to the Governor.

I herewith return the letter of Mr. Mitchum.

Respectfully,
W. H. ELLIS, Attorney General.

INSURANCE COMPANIES.

Tallahassee, Fla., July 15, 1905.

Hon. W. V. Knott,
State Treasurer,
Tallahassee, Fla.

Dear Sir:

I am in receipt of your letter of the 11th inst., enclosing letter from Mr. F. E. Shaw, General Agent, in which he asks whether under the laws of Florida, "It is permissible for a fire insurance company, admitted to transact business in Florida, to reinsure a portion of its liability as to individual risks under cession contract with a fire insurance company not admittted to Florida, but which is duly admitted to New York State, and has $500,000 deposit at Albany, N. Y."

You ask me for an "opinion construing the laws of this State covering the point raised in Mr. Shaw's letter."

I know of no statute in this State which seeks to prohibit such contracts out of the State.

I herewith return the letter of Mr. Shaw.

Respectfully,
W. H. ELLIS, Attorney General.

DEED.

Tallahassee, Fla., July 26, 1905.

Hon. A. C. Croom,
Comptroller,
Tallahassee, Fla.

Dear Sir:

I am in receipt of your letter of May 13th requesting me to "Pass upon the validity" of a certain deed purporting to convey the S.W. 1-4 of the N.E. 1-4 of S.E. 1-4 and the S. 1-2 of N.W. 1-4 of N.E. 1-4 of S.E. quarter of section 26, township 53 south, range 41 east, in Dade County, Florida.

The deed purports to have been made by "The County of Dade," on the 3rd day of August, 1903, to "The State of Florida, for the use of the State Board of Health for hospital purposes." The consideration expressed is $5.00 and other good and valuable considerations.

The deed is signed by George W. Lainhart, Chairman

Board County Commissioners, Dade County, Fla. It is witnessed by two witnesses, attested by E. C. Dearborn, Clerk; by S. O. Fitts, D. C. Execution of the deed was acknowledged, and the same was recorded in Book 20 on page 128 of the records of Dade County.

There is a condition expressed in the deed to the effect that the land is conveyed for hospital purposes only, and and that when the same is discontinued for such purposes it shall revert back to the grantor.

The questions here presented are difficult and require considerable investigation.

The power of the county to convey its real estate and the authority for the purchase of the State, or the acceptance by the State of a gift of lands for the use of the State Board of Health for hospital purposes; the regularity of the execution of the deed are some of the questions involved.

Before rendering an opinion upon the validity of the deed, I should be informed as to how the county of Dade acquired the land, and for what purpose it was acquired. I therefore request you to supply me with this information in order that I may be fully advised of the circumstances before rendering an opinion.

Very respectfully,
W. H. ELLIS, Attorney General.

PENSIONS.

Tallahassee, Fla., Sept. 1, 1905.

Hon. A. C. Croom,
Comptroller,

Dear Sir:

I received today your letter of the 31st ultimo, requesting my opinion as to the merits and demerits of the application of Mr. George Dillard for a pension.

You enclose a letter from Mr. J. W. Smith, of Micanopy, Florida, relating to the same, which I herewith return.

Section 85 of the Revised Statutes requires the Attorney General to give his "official opinion and legal advice" to the Governor, Secretary of State, Treasurer or Comp-

troller on any matter touching their official duties, when required in writing so to do.

The Statute does not require the Attorney General to give his opinion to either the Governor, Comptroller, Secretary of State or Treasurer, upon the weight and sufficiency of the evidence in a matter which requires the exercise of the judgment or discretion of either of them, upon a question of fact.

Chapter 4894, Laws of 1901, which is an act to "Provide Annuities for Disabled Soldiers and Sailors, and Wives of Deceased Soldiers and Sailors of the State of Florida," provides in Section 1, that "When the *proofs* required have been filed with and are *satisfactory* to the State Board of Pensions, the Comptroller shall draw his warrant on the Treasurer of the State in favor of the applicant for the sum to which he may be entitled, and quarterly thereafter a similar warrant shall be drawn in favor of the applicant when it shall be made to appear by the certificate of the Clerk of the Circuit Court of the county wherein such applicant resides, that said applicant is known to him; that he is a bona fide citizen of said county, and is the individual to whom previous payment was made.

Chapter 5444 of the Acts of 1905, provides that the vouchers of pensioners may be approved and signed by either Clerks of the Circuit Court or Notaries Public.

It is very clear from reading the above section, that the judgment of the State Board of Pensions must be pronounced upon *every* application for a pension before it may be granted or denied, and in *no case* should an application be allowed or denied except upon the judgment of the State Board of Pensions, exercised upon the "proofs" submitted to the Board. The opinion, therefore, of one member of the Board upon the weight of the evidence submitted in any case, can be of no importance, except insofar as his vote is concerned upon the question of the approval or rejection of the particular application.

Chapter 4894, Acts of 1901, referred to above, provides in Section 3 that, "The Governor, Comptroller and Attorney General of this State are hereby constituted the State Board of Pensions."

I note that you say, that the Secretary brought to me Mr. Dillard's application with a number of others for my "Consideration and approval." The Secretary, Mr. C. H. Dickinson, brought to my office the day before yes-

terday, August 30th, a file containing about three hundred applications for pensions, which I presume contained Mr. Dillard's application. I understood that I was to examine those applications and return them to you for your examination, and that you would send them to the Governor for his examination, and in this way the three batches of applications into which the whole had been divided should be treated, so that when the Board of Pensions should be called into session, each member thereof would be ready to vote immediately upon each aplication as the same should be read. If the batch of about three hundred applications, which were brought to this office by Mr. Dickinson, were brought for any other purpose, that is to say, to be approved or rejected upon my vote alone, such purpose was contrary to law, so I have returned the applications to the Secretary, and will withhold my vote upon any application until a session of the State Board of Pensions is called.

I wish to say that I am ready to attend a session of the State Board of Pensions, and will do so whenever the same may be called by the Governor, who is the chairman of the Board.

I have not been notified of any meeting of the State Board of Pensions to consider applications since I was commissioned as Attorney General on the 15th day of February, 1904.

Very respectfully,
W. H. ELLIS, Attorney General.

MUNICIPAL BONDS

Tallahassee, Fla., September 2, 1905.

Hon. W. V. Knott,
State Treasurer,
Tallahassee, Fla.

Dear Sir:

I am just in receipt of your letter dated August 29th, in which you request in behalf of the Finance Board an "Official legal opinion as to the validity and binding force" of certain bonds issued by the town of Perry, Florida, for the purpose of installing a system of waterworks at said town.

In reply to your communication, I have the honor to say, that Section 85 of the Revised Statutes of the State of Florida, requires the Attorney General to give his official opinion and legal advice in writing on any matter touching the official duties of the Treasurer, when requested in writing so to do.

Under Section 1, of Chapter 4586, Laws of 1897, the Governor, Comptroller and Treasurer, are authorized to deposit, subject to call, the monies of the State in such banks of the State as will offer the best inducements as to interest and security.

In the matter of depositing money under that section, the joint judgment and discretion of the Governor, Comptroller and Treasurer are to be exercised on a matter of fact, namely: The inducement offered by the bank and the question of security for the deposit. When municipal bonds are offered as such security, it is true that the value of such security depends upon the regularity and validity of the bond issue. I do not understand, however, that it is the duty of the Attorney General to inquire into and report upon the validity of the bond issue of any municipality, whose bonds are offered as security for the deposit under the section to which reference is above made.

Section 85, of the Revised Statutes, does not contemplate that the Attorney General shall render his opinion to the Treasurer upon the weight and sufficiency of evidence in any matter which requires the exercise of his judgment or discretion upon a question of fact.

I herewith return the copy of Chapter 5536 and a document purporting to be a copy of the minutes of certain meetings of the town council of the town of Perry.

Yours respectfully,
W. H. ELLIS, Attorney General.

TAX CERTIFICATES.

Tallahassee, Fla., September 4, 1905.

Hon. A. C. Croom,
Comptroller,

Dear Sir:

I am in receipt of your letter of August 31st, enclosing a letter from Mr. W. H. Brett, Jr., Clerk Circuit Court,

Holmes County, under date of August 29th, in relation to certain tax sale certificates.

You request my opinion upon the question propounded by Mr. Brett.

Mr. Brett states: That the "Tax sale certificates embracing lands of Holmes County prior to January, 1902, were destroyed by fire and have never been re-established in the court of this State according to law." He wishes to know your opinion as to whether he is authorized to sell a certificate (presumably one of those destroyed by fire), and if the same is not redeemed to make a tax deed to the purchaser.

No provision is made by the Acts of 1901 and 1903 for the transfer of the State's interest in a tax sale certificate that has been lost or destroyed, and until such certificate has been re-established according to law, a copy would not have the force nor effect of the original.

I beg to suggest, that in granting the request of Mr. Brett for an opinion in regard to the matter, your letter may be semi-official as your official duties do not impel you to give the advice sought.

Yours truly,
W. H. ELLIS, Attorney General.

MEALS FOR JURORS.

Tallahassee, Fla., September 8, 1905.

Hon. A. C. Croom,
Comptroller.

Dear Sir:

The letter from Judge R. M. Call, in relation to the two bills of Mr. C. J. Perry, Sheriff of St. Johns County, against the State, one for four dollars, and one for eight dollars for meals for jurors, has been carefully read and considered by me.

I concur in the views expressed by Judge Call, that the items are a proper charge against the State.

The expense was incurred in two condemnation proceedings by the Florida East Coast Railway Co., under Chapter 5017, Acts 1901. Section 6 of the act provides for empaneling a jury in such a cause, to try what compensation shall be made to the defendant for the property sought to be appropriated, directs how the issue shall be

tried, provides for the trial of such causes in vacation, and the making by the judge of such orders as may be necessary for procuring a jury.

Section 19 of Article 16 of the Constitution provides, that in such cases the compensation for the property "shall be ascertained by a jury of twelve men in a court of competent jurisdiction, as shall be prescribed by law." The statute provides that such causes shall be tried in the Circuit Court. Jury fees and expenses are not items of cost in the Circuit Court.

Section 13 of the act provides that "All costs of proceedings shall be paid by the petitioner except the cost upon the writ of error taken by defendant on which the judgment of the Circuit Court shall be affirmed."

I think the section means such costs as are taxable in a proceeding in the Circuit Court.

Section 1162, Revised Statutes provides that the expense of providing the jury with meals shall be "taxed against and paid by the State."

I am of the opinion, therefore, that the items in the Sheriff's bill are not properly taxable against the petitioner and should be paid by the State.

I herewith return the letter of Judge Call and the two bills of Sheriff Perry.

Yours truly,
W. H. ELLIS, Attorney General.

COUNTY COMMISSIONERS.

Tallahassee, Fla., September 8, 1905.

Hon. N. B. Broward,
Governor.

Dear Sir:

I am in receipt of your communication of recent date, inclosing a letter from the County Commissioners of Escambia County upon the subject of the "Duties and compensation of the members of the Board" of County Commissioners, "in connection with the superintendence of building and repairing roads and bridges in their several districts;" a copy of a letter from Hon. R. P. Reese County Attorney, upon the subject; a copy of a letter from me to Hon. A. M. McMillan, Clerk Circuit Court to me, and a letter from Hon. A. M. McMillan, Clerk Cir-

cuit Court to you, all relating to the subject of the "Compensation of County Commissioners."

You request my opinion upon the following points:

1. "Have County Commissioners the right to charge the county per diem for inspecting roads and bridges?"

2. "Have they the right to charge mileage while inspecting roads of the county?"

3. "Have they the right to charge their actual expenses, while inspecting roads of the county? If so, should such inspection be ordered by the Board before it is made, and should the bill for such expense be itemized showing what the expense is for?"

4. "Is there a limitation fixed by law as to what compensation a County Commissioner may receive from his county per annum? If so, does this limitation apply to the office or to the individual holding the office? In other words, could (A) hold the office for six months and draw the salary up to the limit, and (B), his successor, draw the salary for the remaining six months?"

Section 5 of Article VIII of the Constitution of Florida, as amended in 1900, provides, that: "The powers, duties and *compensation* of such County Commissioners shall be prescribed by law."

A County Commissioner is an officer.

Hunt v. Finegan, 11 Fla. 105.
Advisory Opinion, 13 Fla. 687.
State ex rel. v Hocker, 39 Fla. 477.

It is the policy of the Government of this State, that no officer shall charge a fee or be paid for any official service performed or claimed to be performed within this State, unless the *fees be* expressly authorized and their *amount* be specified by law.

Section 1305, Rev. Stats., Fla.

The compensation of County Commissioners can only be allowed in accordance with the provisions of the statute; their compensation as well as their duties is fixed by law.

Andrews v. Pratt, 44 Cal. 309.
Howes v. Abbott, 78 Cal. 270.
County of Cook v. Wren, 43 Ill. App. 388.
Board of Supervisors v. Ellis, 59 N. Y. 620.
Ewing v. Ainger, 96 Mich. 587.

Mansel v. Nicely, 175 Pa. St. 367.
State v. Norris, 111 N. C. 652.

Chapter 4911, Laws of 1901, provides that: "The County Commissioners shall be paid $2.00 per day for each day's service, and 10 cents per mile for each mile actually traveled in *going* to and *from* the *court house;* and, provided, That their *per diem pay* shall not exceed $100.00 each per annum."

The statutes providing for the establishing, working and maintaining the public roads and bridges of the several counties, and prescribing the duties of the County Commissioners in regard thereto, do not provide for any additional compensation to be paid to the County Commissioners, nor do they provide for the payment of mileage to the Commissioners while inspecting the roads and bridges of the county.

My conclusion, therefore, is, that neither compensation nor mileage should be paid them for such services.

I think that under the general power to "Make such orders concerning the care of, and the improvement of the corporate property of the county as may be deemed expedient," and the power to "Build and keep in repair county buildings, roads and bridges," the Board may order, the actual necessary expenses of one of its members incurred in examining and inspecting bridges and roads within his dyistrict, to be paid; such expenses, however, do not include personal expenses, but only such sums paid out in the performance of some official duty by the Commissioner, in order to protect the interest of the county. But such expenses should not be paid unless the Board had previously, by resolution, directed the inspection of the road or bridge by the particular member, and authorized the payment of such sums as the Board may have deemed expedient to protect the county's interest, and then only upon itemized statements of such expenditures rendered by the Commissioner claiming the same.

The rule is well settled, says Mr. Dillon, in his work on Municipal Corporations, "That a person accepting a public office, with a fixed salary, is bound to perform the duties of the office for the salary. He cannot legally claim additional compensation for the discharge of these duties, even though the salary may be very inadequate remuneration for services. The rule is important to the public. To allow changes and additions in the duties

properly belonging or which may be properly attached to an office to lay the foundation for extra compensation, would introduce intolerable mischief."

In a number of States provision has been expressly made for the payment of the reasonable and necessary expenses actually incurred by a member of the Board of County Commissioners in discharging certain *.duties* which *devolve* upon him as an *ofifcer* of the county.

The law imposes upon the Board of County Commissioners the duty of caring for, and maintaining the county buildings, roads and bridges, and one who takes the office of County Commissioner is charged with a knowledge of the location of the various county properties, and that the management of them may require him to travel in various parts of the county and devote time and energy to their care and maintenance; but he takes the office "Comonere," and must, therefore, discharge the duties thereof for the compensation and mileage expressly provided by law.

Chapter 4911, Laws of 1901, provides that the County Commissioners shall be paid $2.00 per day for each day's service, and 10 cents per mile for each mile traveled in going to and from the court house, provided that the per diem pay shall not exceed $100.00 each per annum.

I think that the compensation provided for in the above mentioned statute, of $2.00 per day, is to be paid to County Commissioners, only when attending a regular or special meeting of the Board for the transaction of county business, and that for each session, mileage should be paid once only; to illustrate: If the Board of County Commissioners continues in session for two consecutive days or more, and the members return home each day during the continuous session, mileage should not be paid for each trip home and return, but the mileage should be allowed for only one trip in attending upon the meeting and one trip in returning home.

The compensation of $2.00 per day for each day's service is to be paid to each Commissioner, and I think that the limitation of $100.00 per year applies to the Commissioner and dates from the time he enters upon the duties of his office.

I herewith return the documents referred to above.

Very respectfully,

W. H. ELLIS, Attorney General.

Tallahassee, Fla., September 30, 1905.

The Hon. Board of Commissioners of State Institutions, Tallahassee, Fla.

Gentlemen:

The delay of which Mr. I. B. Hilson, contractor for the State printing, has been guilty in the matter of printing and binding of the 45th volume of the Supreme Court Reports, renders it necessary for me to formally submit to you the question of what action shall be taken by the Board in the matter of causing the said volume of the Supreme Court Reports to be printed and bound. It is unnecessary for me to point out to you the necessity for an immediate publication and distribution of the Supreme Court Reports, which contains the law of the State of Florida as expounded by the highest judicial tribunal of the State.

The people of the State should be informed as early as possible of the laws which are enacted by the Legislature and the construction which the Supreme Court has placed thereon.

In April, 1904, I delivered to Mr. I. B. Hilson, the copy for the 45th volume of the Supreme Court Reports. That copy consisted of the head-notes, statements of facts and opinions in the cases decided by the Supreme Court of the State of Florida for the January term, 1903. This copy, immediately upon its receipt by me, was delivered to Mr. Hilson in order that the same might be printed, bound and distributed according to law. The index for that volume, of course, could not be made until the printed pages of the report had been assembled and numbered. For several months after the delivery by me of the manuscript for the above volume to Mr. Hilson, absolutely nothing was done by him toward the printing and binding of the report. I mentioned the matter of his delinquency several times to the Board of Commissioners of State Institutions, and each time it was decided, upon explanations rendered by Mr. Hilson, that he should be given further time in which to complete the printing and binding of that volume of the Supreme Court Reports. Some time in January, 1905, I again brought the matter of Mr. Hilson's delinquency to the attention of the Board

of Commissioners of State Institutions, and urged that the said Board should take some positive action in the matter, having for its object the printing and binding of said reports. At that meeting of the Board Mr. Hilson appeared, and by most positive assurances, promised to complete the said volume on or before the 15th of April next ensuing. His promise was taken by the Board to be a sufficient guarantee that the work would be completed, and he was accordingly given the further time in which to comply with his contract. Upon his assurance that the work would be done and completed as promised, Mr. C. D. Robertson was employed by the Board of Commissioners of State Institutions to read galley proof in the office of the Attorney General, at a salary of $75.00 per month, to be paid out of the appropriation for the printing of the Supreme Court Reports. Mr. C. D. Robertson entered the office of the Attorney General on the 1st day of February, 1905, ready and prepared to read the galley proof, which was to have been furnished by Mr. Hilson for the above named number of the Supreme Court Reports. During the months of February, March, April, May and June, Mr. Robertson continued in the Attorney General's office upon a salary of $75.00 per month, paid out of the appropriation above named, ready to perform the service for which he was engaged, but Mr. Hilson failed to furnish more than about one-third of the galley proof for that volume. And at this time has failed to complete the printing and binding of the report. About the 26th of August he furnished to me two copies of the assembled pages of said report, from which I was to make the index and table of cases for that volume, which work has been completed by me and tendered to Mr. Hilson, but he has refused to accept the index, upon the ground, that I have not supplied him with a model or style for said index. This objection of his, I consider, wholly capricious and unreasonable, for the reason: First, that the index as arranged by me furnishes a sufficient indication of the style in which it is intended that it should be published; secondly, the style in which the index should be published is a matter of very little importance; thirdly, the statute does not direct the Attorney General to sunpply the contractor with a model, and fourthly, because the printer's contract requires him to furnish all material necessary to the performance of his contract.

I therefore recommend that the Board of Commission-

ers of State Institutions declare that the contract has been violated by Mr. Hilson, in the matter of printing and binding the Supreme Court Reports, and that the sum of $250.00, being two-thirds of the amount paid to Mr. C. D. Robertson, be charged against Mr. Hilson and deducted from whatever indebtedness the State may hereafter owe to him on account of public printing, and that another contract be at once made with another person for the printing and binding of volume 45 of the Supreme Court Reports.

Very respectfully,
W. H. ELLIS, Attorney General.

PRINCIPAL OF KINDERGARTEN TO HOLD CERTIFICATE.

Tallahassee, Fla., Oct. 4, 1905.

Hon. W. M. Holloway,
State Superintendent of Public Instruction.
Tallahassee, Florida.

Dear Sir:

I am in receipt of your letter of the 29th ultimo, requesting my construction of Sec. 3, of Chapter 5387, laws of 1895.

The section referred to provides: "That no person shall be employed to teach as principal of a kindergarten department who does not hold a certificate of graduation from a reputable Kindergarten Training School."

Section 1, of the act, provides for the establishment and maintenance of kindergartens, by the Board of Public Instruction or Board of Trustees of any Special Tax School District. Section 2 provides: "That every Kindergarten established under this act shall be part of the public school taught in the same community and shall be under the direction and control of the principal of the said public school."

I am of the opinion that one who teaches in the Kindergarten department of a public school in this State is a teacher in a public school of the State of Florida, within the meaning of Section 1, of Chapter 5204, Acts of

1903, as amended by Chapter 5391, Acts of 1905, and must hold a teacher's certificate granted in acordance with the provisions of Chapter 5204, or must hold an unexpired certificate issued under the laws of Florida, since January 1st, 1894, in addition to the certificate required by Section 3, of Chapter 5387, Acts of 1905.

Yours truly,
W. H. ELLIS, Attorney General.

BONDS, FLORIDA STATE MID-WINTER FAIR ASSOCIATION.

Tallahassee, Fla., October 9th, 1905.

Hon. N. B. Broward,
Governor,
Tallahassee, Fla.

Sir:

I have the honor to acknowledge receipt of your communication of recent date, enclosing the bond presented by the Florida State Midwinter Fair Association, given under the provisions of Chapter 5474, Acts of 1905, and requesting my advice upon the proposition of whether the bond meets the conditions of the Statute.

I beg to reply, that I have examined the bond and am of the opinion that the same fully conforms to the requirements of the statute.

I herewith return the letter of Mr. F. L. Huffaker, the certified copy of the minutes of a meeting held by the directors of The Florida State Midwinter Fair Association and the bond executed by the Association pursuant to said minutes, in the sum of thirty thousand dollars.

I have the honor to be

Yours very truly,
W. H. ELLIS, Attorney General.

WARRANTS.

Tallahassee, Fla., October 10, 1905.

Hon. A. C. Croom,
Comptroller,
Tallahassee, Fla.

Dear Sir:

I am in receipt of your letter of October 1st, requesting my opinion as to whether you "would be justified in drawing a warrant, and the Governor be justified in countersigning" a warrant in favor of the Treasurer of the Florida State Midwinter Fair Association, on the fiirst day of November, the requirements of Chapter 5474, in the matter of bond and security having been fully complied with. I notice the reference contained in your letter to the Constitution, the Revised Statutes and the Acts of the Legislature of 1905.

The first paragraph of Section 1 of Chapter 5474, provides for an appropriation of fifteen thousand dollars, annually for two years for the "purposes of aiding the Florida State Midwinter Fair Association in displaying the agricultural, mineral, horticultural, industrial, forestry, live stock and other resources of the State of Florida."

It was within the power of the Legislature to make the appropriation provided for in the Act.

The second paragraph of the section provides that the "treasurer of the State of Florida is hereby authorized and directed to draw his warrant for the said sum of fifteen thousand dollars annually," etc. This provision of the act, so far as it authorizes the "treasurer of the State of Florida" to draw his warrant and directs that it shall be paid out of any money in the treasury not otherwise appropriated, is void, because it is in conflict with Section 24 of Article IV of the Constitution, which provides that "the treasurer shall receive and keep all funds, bonds and other securities, in such manner as may be prescribed by law, and shall disburse no funds, nor issue bonds, or other securities, except upon the order of the Comptroller countersigned by the Governor in such manner as shall be prescribed by law."

I am of the opinion, however, that the objectionable part of the paragraph may be eliminated without affecting the other provisions of the act. The legislative pur-

pose as expressed in the valid portions of the act can be accomplished independently of the unconstitutional portion, and it can not be said, that the Legislature would not have passed the valid portions of the act, had it been known that the invalid part must fail. English vs. State, 31 Fla., 340; State vs. Brown, 19 Fla., 563.

Section 99, of the Revised Statutes, provides, among other things, that "no warrant shall ever be issued until the same has been authorized by act or resolution of the Legislature." I do not understand that clause to mean that every act of the Legislature making an appropriation shall expressly authorize and direct the Comptroller to draw a warrant for the amount, and expressly direct the Governor to countersign it, but rather, that no warrant shall be issued unless pursuant to an appropriation made by law. The appropriation having been duly made by the act of the Legislature, Chapter 5474, and the requirements of the act in the matter of bond and security having been complied with, the issuing of the warrant by the Comptroller has thereby been authorized within the meaning of Section 99, Revised Statutes.

Yours truly,
W. H. ELLIS, Attorney General.

INSURANCE COMPANIES.

Tallahassee, Fla., Oct. 11, 1905.

Hon. W. V. Knott,
State Treasurer,
Tallahassee, Fla.

Dear Sir:

I am in reecipt of your letter of the 29th of September asking, if Sick and Funeral Benefit Insurance Companies now operating in Florida under the provisions and terms of Chapter 5222, Acts of 1903, who qualified prior to the enactment of Chapter 5459, Acts of 1905, may be granted renewals of license on October 1, 1905, based upon statements of their financiial condition made in conformity with Chapter 5222, such companies not having qualified under the terms of Chapter 5459.

Chapter 5459 repealed Chapter 5222, and the former act went into effect June 5, 1905. It provided that no company, corporation or association then qualified should be affected thereby prior to January 1, 1906. That act provided in Section 7, that each company, corporation or association doing business under the provisions of that act should pay annually to the State Treasurer a license tax of one hundred dollars and two dollars for each local agent, ten dollars for each traveling agent and a fee of five dollars for each annual statement filed.

Companies which were qualified under Chapter 5222, and were at the time of the passage of Chapter 5459 qualified under the former act are not affected by the provisions of Chapter 5459 until January 1st, 1906.

Yours very truly,
W. H. ELLIS, Attorney General.

CORONER'S INQUEST.

Tallahassee, Fla., Oct. 14, 1905.

Hon. N. B. Broward, Governor,
Tallahassee, Fla.

Sir:

I am in receipt of your communication of the 11th instant, enclosing two letters from Hon. H. W. Long, of Marion County, Florida.

You request of me an opinion upon the subject of each letter.

I beg leave to say that it is my judgment, that within the limits prescribed by Sections 3010 and 3011 of the Revised Statutes of Florida, the discretion of a Justice of the Peace ,acting as coroner may not be questioned by the Board of County Commissioners. Section 10, of Chapter 4323, laws of 1895, provides that "all costs and fees arising from coroner's inquests shall be a charge upon the county where the inquest is held, and be payable from the general revenue fund of the county."

Justices of the Peace in this State are required by law to hold inquests of the dead and to that extent are coroners, while acting as such their functions are judicial.

Under the common law it was the duty of a coroner to inquire into sudden, violent deaths, such as when one comes to his death by chance or accident, by his own hand; by the hand of another, where the offender is *not* known; and by the hand of another when the offender *is* known. There ought to be a reasonable suspicion that the person came to his death by violent and unnatural means. Section 3010, of the Revised Statutes provides that "unless there shall appear to the satisfaction of the coroner, after considering the circumstances attending the cause of death, that he has good reason to believe that the death *was* caused by the criminal act and negligence of another, no inquest shall be held," etc.

The courageous and intelligent performance of his duty by a coroner is of very great importance to the people; it secures the prompt apprehension of those suspected of the crime, if any was committed, and protects those who may be innocent, but upon whom suspicion may have unduly rested.

In the case cited by Hon. H. W. Long, I think the action of the coroner in holding an inquest was proper, because, in the given case the coroner had good reason to believe that the death *was* caused by the criminal act and negligence of another, and because it was evident the deceased came to his death by violence. In a case such as in his second inquiry, he supposes may exist, I would say that it would not be an abuse of discretion on the coroner's part, if in the absence of an affidavit by any one that a certain person or persons committed the crime, he should hold an inquest.

As to the inquiry propounded by Mr. Long, relating to the opening of the Registration Books to permit persons to register, that they may vote in a special election, and the duty of the County Commissioners as to the revision of the registration books prior to a special election, I beg to say, that I am of the opinion that the books may not be opened for registration at any other time than that designated in Section 10, Chapter 4328, Acts of 1895 as amended by Chapter 4537, Acts of 1897, and that it is the duty of the County Commissioners, under Chapter 5250, Acts 1903 to hold a meeting at least fifteen days prior to a special election and revise the registration list.

I beg to suggest to your Excellency that as it is no part of the duty of the Attorney General to advise county officials, the foregoing views can not be regarded in any sense as official, nor are they binding upon the county officers. I sincerely hope that if you deem it proper to forward this letter or a copy thereof, to the county officials of Marion county for their guidance, that no confusion may result from this and contrary opinions which may be held by other lawyers.

I herewith return the two letters of Hon. H. W. Long.

Respectfully,

W. H. ELLIS, Attorney General.

STATE PRINTING.

Tallahassee, Fla., Oct. 16, 1905.

Hon. N. B. Broward, Governor,
Tallahassee, Fla.

Sir:

I am in receipt of your letter of August second, requesting my opinion as to whether "The printing required by the Adjutant General's Department, and included in the General Contract for printing, is to be paid for out of the State Printing Fund or out of the funds appropriiated to the Adjutant General's Department, and whether the printing required by the Railroad Commission is to be paid for out of the General State Printing Fund or out of the funds appropriated for the use of the Railroad Commission?"

Section 480 of the Revised Statutes provides that "All the public printing of the State of Florida shall be let out upon contract to the lowest bidder, who shall furnish all paper and other material used in printing and binding." Sections 483 and 484 Revised Statutes require the Board of Commissioners of State Institutions to make the contract for public printing.

I think that the printing required for the organized militia of the State, as well as that required for the Railroad Commissioners, is public printing within the meaning of Section 480 of the Revised Statutes. It was, therefore, proper for the Board of Commissioners of State In-

stitutions to make a contract for the printing required by those departments.

Chapter 5373, Acts of 1905, provides an appropriation for general printing and advertising; it also provides an appropriation for expenses of State Troops, including rent of armories and for annual encampment of State troops. The act also provides an appropriation for salaries and expenses of Railroad Commissioners.

General printing and advertising is an item which, in my judgment, applies to every department, and where it is not otherwise provided, expense on that account should be charged to that appropriation.

The term "expenses" used in the appropriation for State Troops, and in the appropriation for Railroad Commissioners includes such items as are necessary to the proper and efficient administration of the duties of those departments respectively. Printing and advertising is a necessary item of expense in each of those departments and in my opinion is provided for in the appropriations made by the Legislature for those departments. While it appears to have been the purpose of the Legislature to provide by special appropriation for the expense incurred by the Government in printing and advertising, it is also apparent that it was the purpose of the Legislature, that expenses on account of printing in any department should be met by the appropriation for that department when the expenses of the latter were expressly provided for. It is evident that this was the purpose of the Legislature, because the legislative printing has been for many years paid from the appropriation for legislative expenses, and for the year 1905 that item of expense is provided for in the following language: "For expenses Legislature 1905." It could not be maintained that expense on account of legislative printing should be paid from the appropriation for "General Printing and Advertising."

I am informed that the custom has prevailed for several years and acquiesced in by all the departments concerned and the Legislature; that the printing for the State Troops, Railroad Commissioners, and the Legislature, has been paid from the appropriation made for those departments and for the Legislature and that the budgets of expenses have been made up upon that basis.

I am, therefore, of the opinion, that the expense in-

curred by the Adjutant General and Railroad Commissioners for printing for their respective departments should be paid from the appropriations made for those departments.

Respectfully,
W. H. ELLIS, Attorney General.

PEDDLER'S LICENSE TAX—INTERSTATE COMMERCE.

Tallahassee, Fla., October 26, 1905.

Hon. A. C. Croom,
Comptroller.
Tallahassee, Fla.

Dear Sir:

In answer to your verbal request for my opinion upon the question of whether the Wrought Iron Range Company of St. Louis, Mo., who is transacting business in the State as a dealer in stoves or ranges, is subject to a tax under the laws of this State as such dealer, and whether the property of the company which is used in carrying on the business of the company may be taxed under the laws of the State of Florida, I beg to say, that Section 43 of Chapter 5106 provides that "All unlicensed traveling dealers who shall bargain or sell any goods, wares or merchandise, including beers, wines and liquors, for cash or otherwise, by sample or in any other manner, for present or future delivery to any other person whatsoever by himself or agent or agents following after to deliver and collect for same, except a licensed dealer, shall be deemed a peddler under this act. This act shall include peddlers of clocks, stoves or ranges, and sewing machine agents, whether selling by sample or on future delivery, or other wise, *Provided,* That permanent or locally established agents shall be exempt from the provisions of this section." Section 33 of the act provides that "all hawkers and peddlers shall pay a license tax of three hundred dollars. Provided, That a license tax shall not be required from any person selling meat, vegetables, fruit or other products grown in this State and sold by the owner or an agent of the owner for the owner's benefit."

The object of the Legislature in enacting this law was

doubtless, to protect merchants and traders, residents of cities and towns, who are permanent citizens occupying buildings, paying rents and taxes for local privileges, from the mischief of being undersold and perhaps ruined in business by itinerant vendors. Another object, perhaps, was to protect the public from the deception and cheats which could be practiced by persons of this character who go about among strangers from place to place seeking those to whom they may sell, a business which Chief Justice Cooley said could "easily be made a pretense or a convenience to those whose real purpose is theft or fraud." The statute requires all persons, who are not licensed as traveling dealers, who bargain or sell goods or merchandise by sample or in any manner, for present or future delivery to pay taxes as peddlers. This act gives an opportunity to the authorities to inquire into the character of the person who makes application for such license, and the payment of the tax is a quasi guarantee of good faith and honest purposes. To this extent the statute is an exercise of police power, it is uniform in its operation, it falls alike upon every one in this State engaged in the kind of business described in those sections. It makes no discrimination between the citizens of this State and other States, nor between the the products of this State and other States, nor is there any intention to interfere in any way with interstate commerce.

The Wrought Iron Range Company insists that the business in which it is engaged in this State is interstate commerce and that it is not competent for the State of Florida to tax it for the privilege of making sales in the manner in which such sales are made by it.

It is true that the State has no power to levy imposts or duties upon imports or exports nor has it the power to regulate or control commerce between the States. It is also true that the language of the Constitution of the United States laying a prohibition upon the States in the matter of imports and exports is materially different to that used relative to commerce between the States. In the first proposition the language amounts to a positive prohibition against the levying of a tax upon the act of importing or the thing imported; the State's power in this regard is absolutely, completely delegated to Congress, except so far as the limitation "except what may be absolutely necessary for executing its inspection laws"

may affect the power. The reason for the delegation of this vast power to Congress is clearly given by Chief Justice Marshall in the case of Brown vs. State of Maryland, 12, Wheaton 262. In regard to interstate commerce on the other hand, the language of the Constitution does not carry the same meaning; no absolute prohibition is laid upon the States in the matter of taxing goods brought into the State from another State. The power granted is "To regulate commerce with foreign nations and among the several States and with the Indian Tribes," and amounts to a restraint upon the exertion of the taxing power of a State so far only as the exercise of that power operates upon interstate commerce as a regulation thereof.

It has been repeatedly held by the Supreme Court of the United States that when the goods which have been shipped from one State into another State have arrived at their destination in the latter State and were enjoying the protection which the laws of the State afforded, they were subject to a tax which operated uniformly throughout the State without discrimination, although such tax might remotely and indirectly affect interstate commerce. As to the exercise of police powers by a State, Mr. Justice Story said: It "extends over all subjects within the territorial limits of the States, and has never been conceded to the United States." It is in fact, inalienable because it is "essential to the preservation of the authority of local government and the safety and welfare of the people." There is a distinction between the act of taxing all property within a State, generally and uniformly, without any discrimination as to its origin or the place from whence it came and the act of taxing an article which comes from another State as an article of interstate commerce; so is there a distinction between the legitimate exercise of the police power, whereby all persons within the State are required to conform to certain laws and regulations falling uniformly and equally upon all and the attempt to exclude from the State a recognized and legitimate subject of interstate commerce. The former in one case is a proper exercise of the taxing power of the State and in the other is a proper exercise of the police power of the State while the latter in each case is an effort to regulate and control interstate commerce.

The Wrought Iron Range Company is a corporation organized and doing business in the State of Missouri with its general offices located at the City of St. Louis, in which city and State it manufactures stoves or ranges which are sold by its traveling salesmen throughout the United States. Agents are employed by the company to transact its business in Florida. The company is transacting business in Suwannee County, Florida as follows: It employs a division superintendent, several traveling salesmen and a delivery man. Each employee is paid a salary and has no financial interest in the business further than that represented by his salary as an employee of the company. The company ships its ranges from St. Louis, Missouri, in carload lots consigned to itself at Live Oak, Florida, each car contains sixty ranges, each range in a package to itself. The car is received at Live Oak by the Division Superintendent of the company, unloaded and the ranges placed in a warehouse with the packages unbroken, where they remain until sold, which is for an indefinite period. The traveling salesmen, each of whom is supplied with a wagon and a pair of horses or mules and a sample range, attempt to sell the ranges, which are stored in the warehouse, by the samples which they have. They visit different people and effect sales; the orders for ranges are turned over to the Division Superintendent, who, acting for the company, passes upon the financial responsibility of the customer, and if satisfied that he is responsible for his contract, his order is turned over to the deliveryman, who delivers to the purchaser a wrought iron range from the warehouse in Live Oak, in the same package in which it was shipped from St. Louis, Mo. For the purpose of making deliveries, the deliveryman is furnished with a wagon and team of horses or mules. The purchaser gives two notes payable at different times in payment for the range. All ranges are shipped into the State and received by the Division Superintendent of the company before they are sold or orders solicited.

From the foregoing facts it appears that the ranges, when received in Live Oak from St. Louis, had reached their destination; were held in the warehouse of the company, unsold, at the risk of the company to be thereafter sold and delivered in Suwannee County or elsewhere in the State as the contracts for that purpose were com-

pletely consummated. It also appears that the ranges are sold by the company's agents for future delivery to purchasers by other agents following after to deliver the same, and that the agents are not permanent or locally established agents. I am also informed that the company is not licensed in this State as a traveling dealer.

According to the definition given by our statute of peddlers, therefore, the company is deemed a peddler. The power of the State to lay a tax upon peddlers is unquestioned, as is its power to define the term "peddler." I think that the Wrought Iron Range Company, therefore, is doing such a business in Suwannee County, Florida, as makes it liable to the tax imposed upon peddlers. The company claims an exemption from this tax, however, upon the grounds that it is engaged in interstate commerce. If its contention is right in this regard, then the business of peddling can be carried on in this State on an enormous scale, without the participants therein being required to pay one penny of revenue to the State notwithstanding they enjoy the protection which the laws of the State afford. A gigantic mercantile establishment could be located in any city or town in the State with agencies in every county or town, and goods in the so-called original packages sold at wholesale or retail to the people of this State while the participants in such business would be exempt from the payment of any tax upon the goods or license as dealers in any capacity, and this notwithstanding the taxing laws operated uniformly and equally upon the people throughout the entire State and without discrimination against person or property. There is no distinction between a tax on property and a tax upon a license, each is a tax and comes within the power of the State to levy taxes. The Supreme Court of the United States has held that a State was not controlled as to taxation of merchandise shipped into a State from another State by the prohibition against the taxation of imports, but it had the power, after the goods had reached their destination and were held for sale, to tax them without discrimination like other property situated within the State. The exercise of the police power of the State is also the exercise of a sovereign power, and a person who may have shipped goods into the State for sale is not exempt from the operation of the law, because that power

as exerted happens to take the form of a tax upon his license to carry on a mercantile business.

The American Steel and Wire Company vs. Speed, 192 U. S. 500, in my judgment, is a case in point. There it was held that the merchant's tax was valid and the wire company was not exempt. The wire company was a New Jersey corporation; it established an agency at Memphis, Tenn., to which point it shipped large quantities of goods for distribution to its patrons in the Southwest, and from which point it also distributed merchandise to local merchants. Orders for goods were received at its office in Chicago, Ill., and instructions from that point were given to the Memphis agent to deliver. The goods were always delivered and shipped from the warehouse in Memphis in the original package. A merchant's license was assessed against the company and paid under protest, and an action was brought to recover the tax so paid.

Assuming that our statute is not invalid for other reasons, I am therefore of the opinion that the property of the Wrought Iron Range Company is subject to taxation under the laws of the State, and that the company is subject to the tax imposed by Chapter 5106, Laws of 1903, as a dealer.

Very truly yours,

W. H. ELLIS, Attorney General.

SUIT AGAINST TAX COLLECTOR—COLLECTION OF LICENSE TAX.

Tallahassee, Fla., November 10, 1905.

Hon. A. C. Croom.
Comptroller,
Tallahassee, Florida.

Dear Sir:

In reply to your oral request as to what course to pursue in the matter of the suit against J. N. Meeks, as Tax Collector of Suwannee County, for an injunction to restrain him from collecting the license tax assessed against the Wrought Iron Range Company, I beg to say, that the questions involved in that proceeding are of very great importance to the State; in that the constitution-

ality of certain sections of Chapter 5106 of the Laws of 1903, is questioned.

I would like very much to represent in behalf of the State the Honorable Tax Collector of Suwannee County, but I am afraid that the extraordinary amount of work which will devolve upon me for the next three or four months will preclude my taking a leading part in that suit on behalf of the State. If other counsel should be engaged, I will render all the assistance I can, although, the fact that the suit is pending in the United States Circuit Court for the Southern District of Florida, at Jacksonville, will render it exceedingly inconvenient for me to be present at every hearing.

I herewith return the letter of Mr. J. N. Meeks.

Yours very truly,

W. H. ELLIS, Attorney General.

COMPENSATION FOR COMMITTEE FOR REVISING AND CONSOLIDATING STATUTES.

Tallahassee, Fla., November 27, 1905.

Hon. A. C. Croom,
Comptroller,
Tallahassee, Fla.

Dear Sir:

I am in receipt of a letter from Hon. Benjamin S. Liddon, Chairman of the Commissioners appointed to revise and consolidate the public statutes of the State of Florida, addressed to you and dated November 14th, stating that he inclosed "Certificate as to the work being completed and the contract awarded for the printing of the general statutes of the State."

I am also in receipt of the certificate signed by Honorables Benj. S. Liddon, Thos. F. West and J. C. B. Koonce, certifying that in accordance with the provisions of Chapter 5372 they had "awarded the contract for the publication of the said general statutes to the Record Company of St. Augustine, taking a bond of the said Record Company in the sum of Ten Thousand Dollars ($10,000.00) for the faithful performance of the con-

tract, which bond has been approved by us (them)." Also requisitions from Honorables Benj. S. Liddon and Thos. F. West, for the additional compensation as commissioners to revise the laws of Florida as provided for under Chapter 5372, Acts of 1905.

You request me to advise you whether under the statute named, the Commissioners having certified to the fact that the contract for the printing and binding of the said work had been awarded and that a bond had been taken in a sufficient sum for the faithful performance of the contract, they were entitled to receive the Five Hundred Dollars ($500.00), extra compensation for the duties imposed by the said act.

I beg to say, that in my opinion the Commissioners having completed the work imposed upon them by the act and having made the contract for the printing and binding of said work, and having required from the contractor a good and sufficient bond in such sum as within their judgment was proper for the faithful performance of the contract, they are now entitled to receive the extra compensation provided for by the act.

I herewith return the documents referred to.

Yours very truly,
W. H. ELLIS, Attorney General.

TEACHERS' REPORT.

Tallahassee, Fla., November 27, 1905.

Hon. W. M. Holloway,
State Superintendent of Public Instruction.
Tallahassee, Florida.

Dear Sir:

I inclose two letters from Mr. J. G. Fertig, Principal of the Santa Rosa Academy, to me, dated November 11th and 12th, 1905, respectively; letter from Mr. E. L. McDaniel, Superintendent Public Instruction, to me, dated November 11th, 1905, and letter from Mr. McDaniel, as Secretary of the Board of Public Instruction, to Mr. J. C. Fertig, Principal, dated November 18th, 1905, and a letter from Mr. A. P. Hardee, Supervisor of Santa Rosa County, to me, dated November 21st, 1905, all relating to an order

made by the Board of Public Instruction of Santa Rosa County, directing that every teacher in the public schools of Santa Rosa County, including both principals and assistants, should make monthly reports to the Secretary of the Board of Public Instructions.

It is contended by Mr. Fertig, and Mr. Hardee, as Supervisor of the Santa Rosa Academy, that the order is a pernicious one, and is calculated to injure, if not totally destroy the authority of the principal in each school where principals and assistants are employed, and that the order will militate greatly against the interest of the public schools in Santa Rosa County.

These letters have asked for my opinion as to the legality of the order. I have declined to render an opinion upon the question, upon the ground that the matter is one which lies exclusively within the scope of your duties and responsibilities.

Please return the above mentioned letters.

Yours very truly,
W. H. ELLIS, Attorney General.

LICENSES REQUIRED OF ELECTRIC LIGHT AND TELEPHONE COMPANIES.

Tallahassee, Fla., December 19, 1905.

Hon. A. C. Croom,
Comptroller,
Tallahassee, Fla.

Dear Sir:

I am in receipt of your communication of the 10th ultimo, requesting my opinion upon the question whether, under "Section 45, Chapter 510, License Laws of 1903, a company furnishing both electric lights and telephones can combine the two under one license for telephones and electric lights."

Section 45, of Chapter 6106, provides that "All banks and bankers, banking firms and brokers, and all incorporated companies and persons doing the *business* of furnishing water, gas, electricity or telephones to users thereof, having a capital stock of two hundred and fifty thousand dollars or more, shall pay a license tax," graded

in amount according to the capital stock of the company. This section provides for a tax not on the corporation or individual as such, but upon the *occupation* or *business* which the corporation or individual follows.

Section 1 of the act provides: That "No person shall engage in or manage the *business, profession* or *occupation* mentioned in this act, unless a State license shall have been procured from the Tax Collector or State Treasurer," etc., and Section 3, "All licenses may be transferred, with the approval, of the Comptroller with the *business* for which they were taken out."

The statute should receive a fair construction to effect the end for which it was intended. It is obvious that the act seeks to impose a tax upon certain occupations or rather upon persons who follow the vocations or businesses mentioned in the act.

I am of the opinion that the act requires a person or corporation to obtain a license for doing the business of furnishing telephones to users, even though such person or corporation may have obtained a license for doing the business of furnishing water, gas or electricty to users thereof.

Yours truly,

W. H. ELLIS, Attorney General.

TAX CERTIFICATES.

Tallahassee, Fla., January 12, 1906.

Hon. A. C. Croom,
Comptroller,
Tallahassee, Florida.

Dear Sir:

Referring to your communication of recent date, subject, Tax Certificates, file No. 49, I beg to say, that assuming that a court with jurisdiction of the parties and subject matter had before it in a proper case the necessary parties, it is my judgment that it has the power to adjudicate the question of the validity of tax certificates and could order them canceled notwithstanding they might be held by the proper officers for the benefit of the State. It is impossible for me, however, from the copy of the decree now before me in the case entitled, H. E. Gaulden and her

husband, D. L. Gaulden, vs. John Price as Sheriff of Duval County, Florida, and ex-officio as administrator of the estate of Josephine T. Ropes, deceased, et al., defendants, to determine whether the proper parties were before the court, and if the cause was such a one in which the court could adjudicate the validity of the tax title.

Assuming that the court had jurisdiction of the proper parties, and the cause was a proper one, I should say that the Clerk of the Court should obey the order of the court, and mark the certificates enumerated in the decree, "null and void and canceled by order and decree of the Circuit Court of Duval County, Florida."

I herewith return copy of the decree, the letter of Mr. Cassidey, Clerk of the Court, dated October 17th, 1905, a copy of your letter to Mr. Cassidey, dated October 19th, 1905, and the letter of Mr. Cassidey to you, dated January 9th, 1906.

Yours very truly,

W. H. ELLIS, Attorney General.

CERTIFICATE TO COLLECT BIRDS AND EGGS.

Tallahassee, Fla., January 27, 1906.

Hon. B. E. McLin,
Commissioner of Agriculture,
Tallahassee, Florida.

Dear Sir:

The letter of Mr. Asa B. Clark, Principal Manatee County High School, dated January 22nd, 1906, addressed to you, and which you delivered to me with the verbal request that I advise you, if under the law, you have the authority to issue a certificate to Mr. Clark, for the purposes stated in his letter, is now before me.

Section 5 of Chapter 4957, Laws of Florida, Acts of 1901, provides the manner and conditions upon which certificates may be granted to a person, permitting such person to collect birds, their nests and eggs, for strictly scientific purposes only. The conditions of the above section are as follows:

1. The applicant must be of the age of fifteen years or upward.

2. He must present to the person or persons having the power to grant such certificates written testimonials from two well-known scientific men, certifying to the good character and fitness of said applicant to be intrusted with such privilege.

3. He must pay the sum of One Dollar to the person or officer to defray the expense attending the granting of such certificates; and,

4. He must execute a good and sufficient bond in the sum of One Hundred Dollars, signed by two responsible citizens of the State as sureties; said bond conditioned for the faithful observance of the purposes for which the certificate was issued.

Upon compliance with the above conditions by an applicant for a certificate permitting such applicant to collect birds, their nests and eggs, the Comissioner of Agriculture has the authority to grant such a certificate.

Mr. Clark was at one time a resident of this city, and there are at this time well-known scientific men residing here who are doubtless acquainted with him; therefore, you might secure from two of them written testimonials certifying to the good character and fitness of Mr. Clark to be intrusted with such a privilege as is provided for by the statute.

Yours very truly.

W. H. ELLIS, Attorney General.

TITLE TO LOT FOR GOVERNOR'S MANSION.

Tallahassee, Fla., February 21, 1906.

Hon. N. B. Broward,
Governor,
Tallahassee, Fla.

Dear Sir:

I am in receipt of your letter of recent date inclosing a deed from the Tallahassee Land & Improvement Company to the State of Florida, for lots three (3), four (4), nine (9), ten (10), fifteen (15), and sixteen (16), in the Long Grove addition to the City of Tallahassee, in the County of Leon.

You state that the Mansion Commission desires that the title, abstract, etc., to the property be investigated. You

request me to make this investigation if it is practicable for me to do so.

I have examined the deed from the Tallahassee Land & Improvement Company, and find that so far as its form is concerned, it appears to be valid.

As to the authority of the Tallahassee Land & Improvement Company to convey the lands in question, without consideration and for the purpose named in your letter, I am not advised. You failed to inclose abstract of title to the lands in question; and, therefore, I cannot express an opinion upon the title to the lands named in the deed of conveyance. As to the description of the lots, I would much prefer a description which had for its starting point some well defined and established point in the city of Tallahassee. The description as contained in the deed may be sufficient, in that by reference to the plat it could be made certain. There is an absence from the description of any reference to streets, their width and length, and nothing in the description which indicates the size of the lots, all of which, however, by reference to the plat may be ascertained.

I should think it would be more satisfactory if the description of the deed was so accurate that all these matters could be ascertained and settled without reference to any other document or maps.

I suggest that the Mansion Commission obtain an abstract of the title to the property described in the deed and submit same to me that I might examine the title to the property.

I herewith return the deed.

Yours very truly,

W. H. ELLIS, Attorney General.

VALIDITY OF DEED OF PROPERTY FROM DADE COUNTY TO STATE.

Tallahassee, Fla., March 9, 1906.

Hon. A. C. Croom,
Comptroller,

Dear Sir:

I have the honor to acknowledge receipt of your letter of March 1st, transmitting to me the abstract of title

and copy of deed to the property conveyed by the Board of Florida, for the use of the State Board of Health for hospital purposes, and requesting me to advise you of the validity of such deed of conveyance from the county of Dade to the State of Florida, describing the following land: The southwest quarter (S. W. ¼) of the northeast quarter (N. E. ¼) of the southeast quarter (S. E. ¼) and the south half (S½) of the northwest quarter (N. W. ¼) of the northeast quarter (N. E. ¼) of the southeast quarter (S. E. ¼) of Section Twenty-six (26), Township Fifty-three (53), South of Range Forty-one (41) East, containing fifteen (15) acres, more or less.

The deed is executed by George W. Lainhart, Chairman Board of County Commissioners, Dade County, Florida. The consideration expressed is five ($5.00) dollars and other good and valuable consideration. It is witnessed by two witnesses; attested by E. C. Dearborn, Clerk, by S. O. Fitts, Deputy Clerk.

On March 3rd, 1903, the Board of County Commissioners of Dade County, voted to donate to the State fifteen (15) acres of the land purchased for hospital purposes, and the Clerk was instructed to inform the State Board of Health that they were prepared to make it a deed to the land. The Board of County Commissioners ordered that a deed be prepared conveying the above described land to the State of Florida for the use of the State Board of Health, and that the same be executed by the Chairman of the Board and his signature thereto be attested by the Clerk of the Circuit Court. This resolution was fully carried out, and although the attestation clause of the deed recites that the said Dade County has caused these presents to be executed by its Board of County Commissioners and the seal of said county affixed and attested by the Clerk, the execution of the deed by the Chairman in the presence of the Clerk of the Circuit Court, I think, is a compliance with the resolution as adopted by the Board.

The abstract of title to the land in question shows a valid title in Wiliam A. Baldwin up to the time he conveyed to the county of Dade. The deed from Baldwin and wife to the County of Dade does not recite the pur-

pose for which the property was purchased from him by the County of Dade, and the conveyance from the County of Dade to the State of Florida contains a clause which provides, that the land is conveyed for hospital purposes only, and when the same is discontinued for such purpose, then the said lands shall revert back to the County of Dade.

I think the County of Dade was authorized under the law to acquire the property above described for such county purposes as are indicated in the resolution of March 3rd, to which reference has been made.

Counties in this State are authorized to take and hold the title to real estate in some cases and for some purposes and whether the county in this case acquired the property and is holding it for other purposes than was contemplated by law is a question which can be determined only in a proceeding instituted at the instance of the State. But the question of whether the county has the authority to dispose of the real estate so acquired by gift or sale is a question more difficult to determine.

I am of the opinion that the validity of the deed could not be questioned by the county, that it would be estopped from denying its validity, and that therefore, the State would acquire a good title. I would suggest also, that it would be a proper thing for the Legislature at its next session to enact a validating act for the purpose of confirming the title to the property in the State of Florida.

I think that you would be justified in paying the requisition upon the evidence of title in the State of Florida, so far as the payment of the requisition depends upon the conveyance of the property to the State.

I herewith return the following documents: Letter of J. A. McDonald to you, dated Feb. 26, 1906; abstract of title to the southwest quarter (S. W. $\frac{1}{4}$) of the northeast quarter (N. E. $\frac{1}{4}$) of the southeast quarter (S. E. $\frac{1}{4}$) and the south half (S. $\frac{1}{2}$) of the northwest quarter (N. W. $\frac{1}{4}$) of the northeast quarter (N. E. $\frac{1}{4}$) of the southeast quarter (S. E. $\frac{1}{4}$) of Section Twenty-six (26), Township Fifty-three (53), South of Range Forty-one (41) East; two copies of deeds from Wm. A. Baldwin and wife, Alice Baldwin, to the County of Dade; letter from Dr. Joseph Y. Porter, State Health Officer, to you dated May 12th, 1905; deed of conveyance from the County of Dade to the State of Florida; certified copy of resolu-

tion of the Board of County Commissioners, dated March 3rd, 1903; certified copy of resolution adopted by the Board of County Comissioners of Dade County ordering a deed to be prepared to the State of Florida conveying the land first described herein and directing deed to be executed by the chairman of the Board.

Yours truly,
W. H. ELLIS, Attorney Gneral.

COLLECTION OF A TAX ON SICK AND FUNERAL BENEFIT INSURANCE COMPANIES.

Tallahassee, Fla., March 10, 1906.

Hon. W. V. Knott,
State Treasurer,
Tallahassee, Fla.

Dear Sir:

Your letter of the 8th requesting my opinion as to your duty in collecting a certain check which was forwarded to you by the Mutual Life Industrial Association of Athens, Georgia, with its financial statement of December 31st, 1905, has been received.

I understand from your letter that the Mutual Life Industrial Association of Athens, Ga., was authoriezd to transact the business of Sick and Funeral Benefit Insurance in this State, under Chapter 5222, Acts of 1903. The Association transacted business in Florida until January 1st, 1906. Your letter states that the financial statement made by the association shows that the aggregate gross receipts of the Association in Florida in 1905 were $10,845.00, and that the check sent you is for an amount exactly equivalent to 2 per cent. on the gross receipts of the asociation.

The question is: Does the law of Florida require insurance companies doing a Sick and Funeral Benefit business only, to pay a tax of 2 per cent. upon the gross receipts of such companies?

On January 24th, 1905, I wrote you, that Chapter 5222, laws of Florida did not impose a tax of 2 per cent. upon the premiums of insurance companies doing a Sick and Funeral Benefit business in this State.

As the law does not require the payment of such tax by insurance companies doing a Sick and Funeral Benefit business only, if the Mutual Life Industrial Association of Athens, Georgia, transacts that kind of business only, then, you should not require the company to pay the tax. Chapter 5459, laws of 1905 does not impose a tax of 2 per cent. upon the premiums or gross receipts of insurance companies doing the business of Sick and Funeral Benefit insurance only.

Yours truly,
W. H. ELLIS, Attorney General.

REQUEST FOR COPY OF BILL OF COMPLAINT IN A CERTAIN CASE.

Tallahassee, Fla., March 20, 1906.

Hon. A. C. Croom,
Comptroller,
Tallahassee, Florida.

Dear Sir:

I am in receipt of your letter enclosing letter from G. E. Dutton, Tax Collector of St. Lucie County, and subpoena in chancery, in the case of St. Lucie Club vs. W. R. Hardee et al. and G. E. Dutton.

I note that the subpoena is returnable to the second day of April. I would like to have a copy of the bill of complaint in order that I might be informed of the nature and cause of the action against the Tax Collector.

Yours very truly,
W. H. ELLIS, Attorney General.

KINDERGARTENS.

Tallahassee, Fla., March 20, 1906.

Hon. W. M. Holloway,
State Superintendent Public Instruction,
Tallahassee, Florida.

Dear Sir:

I have the honor to acknowledge receipt of your communication of the 19th. inst., requesting me to construe

Section 1 of Chapter 5204 and Chapter 5387, Laws of Florida.

The latter act provides for the establishment of Kindergartens by County Boards of Public Instruction or by Trustees of Special Tax School Districts, under certain conditions. Section 2 of the act provides, that every kindergarten established under the act shall be a part of the public school taught in the same community, and shall be under the direction and control of the principal of the said public school.

Section 3 of the act provides that no person shall be employed as principal of a kindergarten department who does not hold a certificate of graduation from a reputable kindergarten training school.

Chapter 5204, Acts of 1903, as amended by Chapter 5391, Acts of 1905, provides that no person shall be permitted to teach in the public schools of the State of Florida, who does not hold a teacher's certificate granted in accordance with the provisions of the act. The act provides, that County Superintendents may hold a special examination, and issue temporary certificates for a term not longer than the interval between the regular examination, provided the applicant for such certificate furnishes satisfactory reasons for having failed to attend the regular examinations.

teach in a kindergarten established under Chapter 5387, Laws of Florida is a part of the public school taught in the same community where it is so established, and as no person may teach in the public schools of this State, who does not hold a teacher's certificate granted in accordance with the provisions of Chapter 5204, Laws of Florida, I am of the opinion that a person must hold a teacher's certificate provided for under Chapter 5204, as amended by Chapter 5391 Laws of Florida, in order to teach in a kindergarten established under Chapter 5387, Laws of Florida.

Yours very truly,
W. H. ELLIS, Attorney General.

DEED CONVEYING PROPERTY AS DIRECTED BY BOARD OF EDUCATION.

Tallahassee, Fla., March 22, 1906.

Hon. W. M. Holloway,
State Superintendent, Pub. Instruction.
Tallahassee, Florida.

Dear Sir:

I have prepared the deeds for the Gainesville property as directed by the State Board of Education, and the deeds have been executed, copies thereof filed with the Secretary of State and the originals placed in the hands of the State Treasurer with instructions to collect the amount of consideration expressed in each deed from the grantees respectively.

Yours very truly,
W. H. ELLIS, Attorney General.

DEEDS OF CERTAIN TRUSTEES TO BOARD OF EDUCATION.

Tallahassee, Fla., March 22, 1906.

Hon. W. M. Holloway,
State Sup. Pub. Instruction,
Tallahassee, Florida.

Dear Sir:

I herewith return deed from Trustees of Seminary East of Suwannee River to Board of Education of State of Florida, also two letters from Mr. W. R. Thomas to yourself and letter from B. F. Hampton to Mr. Thomas.

Yours very truly,
W. H. ELLIS, Attorney General.

COLLECTION OF DRAINAGE TAX.

Tallahassee, Fla., April 3, 1906.

Hon. A. C. Croom,
Comptroller,
Tallahassee, Florida.

Dear Sir:

I am in receipt of your letter of the second requesting my opinion as to the power of the Comptroller to authorize the County Tax Collectors to collect and issue receipts for the regular State and County taxes without including in such collection and receipts the drainage tax provided for by Chapter 5377, Acts of 1905.

The act referred to, provides that the amount levied by the Board of Drainage Commissioners shall be collected by the various tax collectors of the counties wherein such levies have been made as other taxes are collected in accordance with law and pay over said amounts collected to the Board of Drainage Commissioners.

The power of the Board of Drainage Commissioners to to authorize the tax collectors to suspend the collection of the drainage assessment is a proposition maintained by many lawyers in this State but denied by others.

At a meeting of the Board of Drainage Commissioners, held on the 22nd day of March, the question of directing the Tax Collectors to suspend the collection of the drainage assessment pending the litigation then existing to test the validity of the act, was considered. All members of the Board were present; a motion was made by me to direct the Tax Collectors to suspend the collection of the assessment, but the Board decided to advise the Tax Collectors of the counties lying wholly or in part within the drainage district to proceed with the collection of the drainage assessment until restrained by the courts from so doing.

This action was taken after considering the propositions made by Messrs. J. C. Cooper, and E. J. L'Engle, and others, on behalf of their clients to the Board, to suspend the collection of such drainage assessments pending the decision of the court in the case of the Southern States Land and Timber Company vs. The Board of Drainage Commissioners et al., then pending in the United States Circuit Court for the Southern District of Florida.

I advised Messrs. Cooper and L' Engle by letter of the action of the Board.

Since this action was taken by the Board, the Judge of the Court in which the case of the Southern States Land and Timber Company vs. The Board of Drainage Commissioners et al. is pending, has overruled the Board's demurrer to the Company's bill, thereby reaffirming his opinion as formerly expressed, viz: That the assessment was invalid.

Under Chapter 4322, acts of 1895, as amended by Chapter 4885, acts of 1901, the Tax Collectors are required to collect out of the real estate and personal property and from each of the persons and corporations named in the roll, the taxes set down in the roll opposite each name, corporation or parcel of land therein described. Chapter 5377, acts of 1905, directs the Tax Collectors to collect the drainage assessment as other taxes are collected.

The act does not authorize the Comptroller to suspend the operation of the law under which the collectors act in the collection of taxes, nor does the revenue act of 1895, Chapters 4322, as amended vest in the Comptroller any such power.

Injunctions in behalf of the owners of a large portion of the swamp and overflowed lands embraced in the drainage district have issued against the Board, restraining it from enforcing the collection of the assessment, since the action of the Board to which reference is above made. In view of this fact the Board might with propriety reconsider its action of the 22nd of March.

Yours truly,
W. H. ELLIS, Attorney General.

ELIGIBILITY OF SUPERVISOR OF REGISTRATION.

Tallahassee, Fla., April 12, 1906.

Hon. N. B. Broward,
Governor,
Tallahassee, Fla.

Dear Sir:

I am in receipt of your communication of the 12th, asking my opinion as to whether a Supervisor of Registration

who resigns his commission more than six months prior to an election is eligible to the office of Member of the Legislature.

Section 9 of Chapter 4328, laws of Florida, acts of 1895, provides in part as follows: "The Supervisor of Registration shall not be eligible for any other office until six months after ceasing to be such supervisor."

If a Supervisor of Registration resigns his commission, another person appointed to succeed him, and such other person qualifies as such officer and assumes the duties of the office more than six months prior to the general election for this year, then such former person would be eligible to any other office, if otherwise qualified.

Yours very truly,
W. H. ELLIS, Attorney General.

CERTAIN LIGHTNING ROD AGENTS PROTECTED FROM PAYING LICENSE TAX BY INTERSTATE COMMERCE REGULATIONS.

Tallahassee, Fla., June 18, 1906.

Hon. A. C. Croom,
Comptroller,
Tallahassee, Fla.

Dear Sir:

Your communication of recent date enclosing a letter from Hon. Geo. N. Bardine, County Judge of Clay County, relating to license tax upon a certain St. Louis Company, engaged in the business of selling lightning rods, I beg to say, that from the facts submitted by Mr. Bardin's letter, I would say that the company is engaged in interstate commerce, and is therefore, not subject to the tax imposed on lightning rod agents.

Yours very truly,
W. H. ELLIS, Attorney General.

CERTAIN CORPORATIONS.

Tallahassee, Fla., June 18, 1906.

Hon. H. Clay Crawford,
Secretary of State,
Tallahassee, Fla.

Dear Sir:

In reply to your communication of recent date concerning the proposed organization of a corporation to buy, sell, rent, mortgage or otherwise dispose of and handle furniture, household effects and other personal property and chattels, and to conduct a warehouse business for the storage of household effects and to insure the same, I beg to say, that I am not advised of any law in this State which prohibits the organization of a corporation for such purposes.

Yours very truly,
W. H. ELLIS, Attorney General.

DUTY OF STATE TREASURER, REGARDING ESCHEATED PROPERTY.

Tallahassee, Fla., July 6, 1906.

Hon. W. V. Knott,
State Treasurer,
Tallahassee, Fla.

Dear Sir:

I have your communication of recent date concerning the application of Daniel Ahern, as heir of the late John L. Ahearn, for the money that was deposited with the State Treasurer on August 15, 1896 under the statute relating to escheats, and note your request for my opinion as to the disposition it is your official duty to make of the application.

You state that from the records of your office it appears that on August 15th, 1896, there was received in your office and placed to the credit of the Common School Fund principal, from Geo. E. Smith, Sheriff of Escambia County, Florida, the sum of $482.41, represented to be the balance of the proceeds of the escheated estate of John L.

Ahearn, deceased; and that you find no record showing that the money has been paid over to any heir of the said decedent, under Sec. 1857 of the Revised Statutes. That Section provides, that if any heir or legal representative of any estate shall appear and prove his right to the estate after payment of the proceeds thereof into the State Treasury, the treasurer shall order the money so paid into the treasury forthwith to be reimbursed to said heir or legal representative out of the State treasury.

By this section there is no limit of time prescribed within which heirs of the decedent may make application for the funds which have been paid into the State treasury under the statutes of escheat.

The statute in relation to escheats does not prescribe when property becomes escheated within the sense that an escheat is a falling of a decedent's estate into the general property of the State, upon his death intestate and without lawful heirs.

The section to which reference is above made clearly contemplates that an heir of the decedent may prove his right at any time to the socalled escheated property and insist upon its return to him.

The Constitution which provides in Section 4 Article 12, that the School Fund shall be derived from the following sources; * * * * the proceeds of escheated property and forfeitures, and which provides in Section 5 of the same Article, that the principal of the State School Fund shall remain sacred and inviolate, is not a limitation upon the power of the Legislature to regulate the descent or succession of property.

The Statute of descent in this State prescribes an inexhaustible line of succession, so that one may say, that practically every person who dies in this State has an heir near or remote and who under the statute of escheat may at any time make his appearance and lay claim to the property which under Sections 1846 and 1849 of the Rev. Stats., may have been paid into the State treasury.

I am of the opinion therefore, that Section 4 of Article 12, of the Constitution, which provides that the School Fund shall be derived among other sources from the proceeds of escheated property, means property which has been completely escheated, that is to say, the property of an individual who dies without heirs within the meaning of the statute of descent. Property therefore, which has been paid into the State treasury under our statute

of escheat is not intended to be carried immediately to the School Fund, nor is it intended to be placed in the treasury within the sense of the constitutional provision which provides that the treasurer shall receive and keep all funds, bonds and other secureties in such manner as may be prescribed by law, and shall disburse no funds or issue bonds or other secureties, except upon the order of the Comptroller countersigned by the Governor, in such manner as shall be prescribed by law. Sec. 24, Art. 4 Constitution, and that no money shall be drawn from the treasury except in pursuance of appropriations made by law. Sec. 4. Art. 9 Constitution. But on the other hand, such statute contemplates that the money shall be placed in the treasury as a depository to await the claim of the person who can establish his title thereto by reason of his heirship to the decedent, whose property was so placed in the State treasury.

It is therefore my opinion that you would be justified as State Treasurer in ordering the money so paid into the treasury as the property of the decedent, John L. Ahearn, under the statute of escheat to be paid to any heir of John L. Ahearn, deceased, who shall appear and prove to your satisfaction his right to the same.

As to when such proof has been made is a matter for the exercise of your judgment and I therefore express no opinion upon the sufficiency of the affidavits submitted to establish the validity of Daniel Ahearn's claim. I suggest that it would not be unwise to require the claimant Daniel Ahearn to establish his right to the money in question by a judicial proceeding.

Yours very truly,

W. H. ELLIS, Attorney General.

ASSESSMENT OF TURPENTINE LEASES.

Tallahassee, Fla., July 6, 1906.

Hon. A. C. Croom,
Comptroller,
Tallahassee, Fla.

Dear Sir:

I am in receipt of your letter of recent date enclosing letter of Hon. Edwin R. Williams, Clerk Circuit Court, Fernandina, Florida. The subject of Mr. Williams' letter

is the assessment of turpentine leases. He says that a number of the leases assessed are expired leases.

Mr. Williams suggests that all of the certificates issued by the Tax Collector for unpaid taxes on these turpentine and timber privileges be cancelled.

I refer you to Section 12 of Chapter 4888 laws of 1901 and Chapter 5151 laws of 1901. In the one case the Comptroller has power to order the certificates to be cancelled if it shall appear that the taxes for which the certificate and Chapter 5151 laws of 1903. In the one case the Comptroller, State Treasurer and Attorney General have the power to cancel the certificates when they appear for any cause to be illegal, void or imperfect.

I should think there would be no difficulty in issuing a tax deed under Chapter 5380, laws of 1905, because that statute directs that the taxes upon turpentine and timber privileges shall be collected just as if said interest in said land was land itself.

If the assessor has assessed the turpentine and timber privileges correctly the certificate could very easily follow the language of such assessment.

I herewith return the letter of Mr. Williams.

Yours very truly,

W. H. ELLIS, Attorney General.

LETTER FROM TREASURER OF DEERING MILLIKEN COMPANY.

Tallahassee, Fla., July 6, 1906.

Hon. A. C. Croom,
Comptroller,
Tallahassee, Fla.

Dear Sir:

I am in receipt of your communication of the 25th ult., enclosing letter from Mr. S. M. Milliken, Treasurer of the Deering, Milliken Company.

The subject of his letter relates to a purely business matter upon which his company may obtain the advice of its own counsel.

I herewith return the letter of Mr. Milliken.

Yours very truly,

W. H. ELLIS, Attorney General.

PAYMENT OF EXPENSES OF TEACHERS SUMMER TRAINING SCHOOLS.

Tallahassee, Fla., July 13, 1906.

Hon. W. M. Holloway,
State Supt. Pub. Inst.,
Tallahassee, Fla.

Dear Sir:

I am in receipt of your communication of the 9th instant, stating that arrangements were made to operate Teachers' Summer Training Schools at Tallahassee and Gainesville, and that the bills for salaries and other expenses in connection with these schools had been filed with you and had received your approval, but upon being presented to the Comptroller he refused to draw his warrant in payment of the same.

You request my written opinion as to the effect of Chapter 5384, Laws of 1905, upon Chapter 5385, Laws of 1905. I beg to state that Section 85 of the Revised Statutes provides that the Attorney General shall, upon the written requisition of the Governor, Secretary of State, Treasurer and Comptroller, give his official opinion and legal advice in writing on any matter touching their official duties. Construing this Section to mean that such opinion shall be given upon the written requisition of the State Superintendent of Public Instruction touching his official duties, I respectfully comply with your request.

Chapter 5385, Laws of 1905, is entitled an act requiring Teachers' Summer Training Schools and making appropriations therefor. That act in Section 2 requires the Comptroller to draw warrants upon the requisition of the State Superintendent of Public Instruction out of any funds in the Treasury not otherwise appropriated in Section 1 of this act. Section 1 of the act, among other things, provides that a sum of $2,500.00 for the year 1905, and $2,500.00 for the year 1906, or as much thereof as may be necessary, be appropriated for the purpose of maintaining such Teachers' Summer Training Schools at such times and places as may be designated by the State Superintendent of Public Instruction, as the fund in said act and that donated from the Peabody Fund will sustain. Section 3 of the act makes it the duty of the State Superintendent of Public Instruction to submit a

report to the next General Assembly, showing the number and location of schools conducted by means of the appropriation made in that act. The number of teachers attending each by race and sex, the conductors of each school with the number of days' service rendered by each, and the amount paid each; and submit vouchers for every dollar paid out from this fund. That act was approved May 24, 1905.

Section 132 of the Revised Statutes provides that the State Superintendent of Public Instruction shall have the oversight, charge and management of all matters pertaining to public schools, school buildings and grounds. The question arises whether it was your duty to file vouchers in your office for the expenditures incurred in maintaining the Summer Schools, and to examine the applications for teachers' salaries and other expenses incurred in maintaining said schools.

In my opinion, it was the intention of the Legislature that the work of designating the times and places at which Teachers' Summer Training Schools should be held, and the work of keeping a correct record of the number and location of the schools, the number of teachers attending each, by race and sex, the conductors of each school, showing the number of days service rendered by each, and the amount paid each, should devolve upon the State Superintendent of Public Instruction. To this end, I think it was perfectly proper for you to examine the bills for teachers' salaries and other expenses incurred in maintaining said schools, and make requisition upon the Comptroller for the payment of the same.

I note that you say that the Comptroller refuses to comply with Section 2 of the act, giving as a reason therefor, that Chapter 5384, Acts of 1905, repeals Chapter 5385. I beg to say that the matter of drawing warrants against the fund appropriated under Chapter 5385 is a duty which devolves upon the Comptroller upon the requisition of the State Superintendent Public Instruction. His refusal to honor such requisition, I think cannot be considered as a matter touching your official duties. I beg to say, however, that I do not agree with the Comptroller that Chapter 5384, which was passed June 5, 1905, some twelve days subsequent to Chapter 5385, repeals the latter act. It may and does have the effect of repealing certain provisions in the latter act, but does

not, in my opinion, repeal the act in its entirety. It certainly does not repeal the appropriation of $2,500.00 for the years 1905 and 1906, nor does it repeal the clause directing the State Superintendent of Public Instruction to designate the times at which such schools shall be held, nor does it repeal Section 2 of the act, nor Section 3.

Chapter 5384, which is an act providing for the abolishment of certain educational institutions, and for the establishment of other educational institutions, and making appropriations therefor, provides, among other things, that all Summer Training Schools now or that may be hereafter provided for shall be taught, had and held in and at the University of the State of Florida, and the Board of Control shall make such provisions therefor as shall be requisite and necessary. The effect of this clause would be to repeal so much of Chapter 5385 as is contained in the proviso of Section 1 of that act, and so much of the section as contemplates the designation of the places where such schools may be held by the State Superintendent of Public Instruction. The language of the portion of Chapter 5384 just quoted does not require that the Board of Control shall make pecuniary provision for the maintenance of such Summer Training Schools, but, in my opinion, it requires them to make such provisions at the University and the Female College, regarding the accommodations and use of buildings and equipment, as may be necessary in the maintenance of said schools. It is clear to my mind that the appropriation provided for by Chapter 5385 was not repealed by Chapter 5384, because the appropriation provided for in the latter act (see Section 30) is limited to the maintenance and support of the four institutions created by the act, to-wit; the University of the State of Florida, the Female College, the Blind, Deaf and Dumb Institute, and the Colored Normal School. The establishment and maintenance of teachers' Summer Training Schools was provided for specially by Chapter 5385.

There is no provision in Chapter 5384 which expressly repeals Chapter 5385. If, therefore, the latter chapter, or any part thereof is repealed, it must be by implication.

The rule regarding repeals by implication is that such repeal results from some enactment, the terms and necessary operation of which cannot be harmonized with the terms and necessary effect of an earlier act. The general principles concerning repeals by implication are uni-

formly held to be: first, the law does not favor the repeal of an older statute by a later one by mere implication. Second, the implication, in order to be operative, must be necessary, and if it arises out of repugnancy between the two acts, the latter abrogates the older one to the extent that it is inconsistent and irreconcilable with it. If it is possible to do so, the latter and the earlier act should be construed together, so as to give effect not only to the distinct parts or provisions of the older not inconsistent with the new law, but to give effect to the old law as a whole, subject only to such restrictions or modifications of its meaning as seem to have been the Legislative purpose.

It is perfectly clear that it was not the Legislative purpose as expressed in Chapter 5384, to repeal the appropriation made in Chapter 5385 for the maintenance of Teachers' Summer Training Schools, nor to repeal Sections 2 and 3 of the latter chapter. On the other hand, I take it that the Legislative intention in this matter, especially in regard to the appropriation for the maintenance of Teachers' Summer Training Schools, affirmatively appears to have been not to repeal the appropriation provided in Chapter 5385, because the appropriation made by Chapter 5384 is expressly confined and limited to the maintenance of the four institutions created by the act, nor does Chapter 5384 designate Teachers' Summer Training Schools as a part of or adjunct to either one of the four institutions of learning created by the act, but it treats, on the other hand, the Summer Schools as separate and distinct educational institutions.

Yours very truly,
W. H. ELLIS, Attorney General.

COMPENSATION OF JAILOR.

Tallahassee, Fla., August 7, 1906.

Hon. Ernest Amos,
State Auditor,
Capitol.

Dear Sir:

I am in receipt of your letter asking if, in my opinion, it is lawful for Boards of County Commissioners to pay a

salary to a person as jailer. In reply thereto I beg to say that I am of the opinion that the Sheriffs are ex-officio jailers and the County Commissioners have no authority to pay a salary for such service. They may, under the law, make contracts for the feeding of prisioners.

I think that for the service required by Section 2799 of the Revised Statutes, clerks of criminal courts of record, county judges and justices of the peace may charge a fee which, I think, is prescribed by Section 1394 of the Revised Statutes. As to the latter question, whether or not officers are entitled to a fee of thirty cents for certifying their cost bills, I have to say, that in my opinion, they are required to make affidavit as to the correctness of their bills and I think that for such expense incurred there is no provision for their reimbursement.

Yours very truly,

W. H. ELLIS, Attorney General.

VALIDITY OF CERTAIN TAX CERTIFICATE.

Tallahassee, Fla., August 8, 1906.

Hon. A. C. Croom,
Capitol.

Dear Sir:

I have before me letter of Messrs. H. J. & H. J. Baker of Fernandina, a copy of a tax sale certificate and a copy of page 119 of the assessment roll for the county of Nassau, Florida. I presume that these documents were submitted to me in accordance with the request of Messrs. Baker & Baker in their letter, to which reference was made. I think that the assessment of the turpentine and timber privileges, as the same appears on the copy of said page 119, was not made in accordance with the statute, and that a tax certificate based on a sale for the unpaid taxes upon such assessment is void.

I herewith return papers mentioned.

Yours very truly,

W. H. ELLIS, Attorney General.

GAS-MEASURING SLOT MACHINES TAXABLE.

Tallahassee, Fla., Sept. 10, 1906.

Hon. A. C. Croom,
Comptroller,
Tallahassee, Fla.

Dear Sir:

In reply to your letter of August 31st, asking if gas companies using automatic slot machines for the purpose of measuring gas should pay a license tax upon each machine so used by such gas company, I beg to say, that in my opinion under Section 19 of Chapter 5106 laws of 1903, such gas companies should be required to pay a license tax upon such machines.

Yours very truly,
W. H. ELLIS, Attorney General.

SPECIAL TAX ON PROPERTY IN TOWN OF ESTERO.

Tallahassee, Fla., Sept. 10th, 1906

Hon. N. B. Broward,
Governor,
Tallahassee, Fla.

Dear Sir:

I have a letter addressed to you by Hon. W. M. Hendry, Clerk of the Circuit Court for Lee County, in which he requests you to obtain my opinion upon the matter contained in the letter.

It seems from the letter of Mr. Hendry that some citizens of Lee County have organized and established a municipal corporation known as the town of "Estero," that it consists of about four townships. I understand that Lee County levied a road tax, under Chapter 5235, acts of 1903, for the year 1905, and the mayor of Estero has applied for the town of Estero's part of such tax under said act. The Board of County Commissioners is in doubt as to its duty in this regard.

If the town of Estero is a duly incorporated town, it is under the provisions of Chapter 5235, entitled to one-half of the amount realized from the special tax on the property in the town.

Yours very truly,
W. H. ELLIS, Attorney General.

APPLICATION FOR TAX DEEDS.

Tallahassee, Fla., Oct. 12, 1906.

Hon. A. C. Croom,
Comptroller,
Tallahassee, Fla.

Dear Sir:

Yours of recent date enclosing a letter from Mr. R. R. Carroll, in regard to the publication of notices of intention to apply for tax deeds has been received.

I respectfully refer you to Chapter 4888, Section 8; and Chapter 5152, laws of 1903, which in my judgment controls.

I herewith return the letter of Mr. Carroll.

Yours very truly,
W. H. ELLIS, Attorney General.

AUTHORITY TO DO AN INSURANCE BUSINESS.

Tallahassee, Fla., December 4, 1906.

Hon. W. V. Knott,
State Treasurer,
Tallahassee, Fla.

Dear Sir:

Replying to yours of the 12th ultimo in regard to The Florida Live Stock Insurance Company, I beg to say that in my opinion the company comes within the provisions of Section 2758 of the General Statutes, and is required to obtain a certificate of authority from The State Treasurer under the direction of the Board of Insurance Commissioners before it is permitted under the law to take any risks or transact any business in this State.

Yours very truly,
W. H. ELLIS, Attorney General.

PRINTING FOR STATE BOARD OF HEALTH.

Tallahassee, Fla., Dec. 4, 1906.

Hon. J Emmett Wolfe,
Sec'ty. Bd. Com'rs State Institutions.
Tallahassee, Fla.

Dear Sir:

I have the honor to acknowledge receipt of your communication of recent date enclosing a letter from the Capital Publishing Company relating to printing for the State Board of Health.

You ask for my opinion "as to whether or not the printing of the State Board of Health is properly embraced in the contract with the State printer, and whether or not the giving of the State Board of Health printing, by that body, to other parties is in violation of the contract with the State printer, and whether or not the Board of County Commissioners of State Institutions has the power to compel a compliance with the State printing contract by the State Board of Health; if so, what steps it is necessary to take in order to force such compliance with the Printing Contract."

The Printing Contract for public printing was made on the 6th day of October 1905, with the Capital Publishing Company, a corporation organized and doing business under the laws of the State of Florida.

Section 480 of the Revised Statutes required all public printing of the State of Florida, to be let out upon contract to the lowest responsible bidder, who was required to furnish all paper and other material used in printing and binding. Section 484 provided, that the Board of Commissioners may make different contracts for different kinds or classes of printing or binding.

I regard printing for the State Board of Health as public printing within the meaning of Sections 480 and 484 of the Revised Statutes. But that class or kind of printing was not embraced in the contract above mentioned, which contract specifies only two classes, namely Class "A" and Class "B." Neither of these classes embrace the printing that may be required by the State Board of Health.

In the contract mentioned the Capital Publishing Company agreed to do all the State Printing embraced in

classes "A" and "B." By its terms therefore, the contract eliminates the printing that may be required for the State Board of Health.

Under Section 656 of the General Statutes, the Board of Commissioners may, if it deems it proper to do so, make a different contract for the printing required by the State Board of Health.

I am of the opinion therefore, that the making of contracts by the State Board of Health for printing that may be required by that body, with another than the Capital Publishing Company, is not in violation of the contract with the State Printer.

Yours very truly,
W. H. ELLIS, Attorney General.

RAILROAD SERVICE.

Tallahassee, Fla., Dec. 18, 1906.

Hon. N. B. Broward,
Governor of Florida,
Tallahassee, Florida.

Dear Sir:

I have the honor to acknowledge receipt of your communication of this date enclosing letter from the Railroad Commissioners of the State of Florida, and copies of communications received from different persons by the Railroad Commissioners relating to the unsatisfactory service which certain railroad companies in this State are rendering to the patrons of such companies. I note your request to advise you whether or not the law of Florida provides any method by which the offending railroads may be forced to a more complete execution of their duty to the public, and if so, the proper procedure to be employed, and the officer whose duty it is to take action under the law.

In reply to your communication I beg to say, that before the date of your letter to the Honorable Railroad Commissioners, I had begun an investigation of the conditions existing in the territory traversed by the Atlantic Coast Line Railroad Company, in this State, which resulted from the poor service rendered by that railroad company, with the view of developing a line or method of procedure that would secure from that railroad company

a more efficient service, and a more complete discharge of its duties to the public. To that end I communicated with the president of the Board of Trade of the Ctiy of Ocala, and suggested that a committee be appointed to confer with me in order that evidence might be forthcoming at the proper time of the condition of the tracks, equipment and motive power of the Atlantic Coast Line Railroad Company, and its system of management.

In accordance with my suggestion a meeting is to be held in Ocala, Thursday, December 20th, of citizens and their representatives, who are directly affected by the poor service of the common carriers operating in the southern portion of the State and the west coast. To that meeting I have invited certain officials of the Atlantic Coast Line Railroad Company.

If the facts brought out at the proposed meeting justify in my opinion, legal proceedings against the railroad companies who may be guilty of a failure to perform their duties as common carriers, it is my purpose to immediately institute legal proceedings to compel them to a performance of such duties.

The first duty of common carriers is to receive, transport and deliver, with reasonable dispatch and safety, all freights, proper to be tronsported, which may be offered along its line for transportation; and to transport with reasonable diligence and safety all passengers who may desire to be carried from one point to another along its line.

The complaints which I have received within the last three weeks from citizens residing in Putnam, Marion, Alachua, Sumter, Citrus, Hernando, Polk, Pasco, Lake, Hillsborough, DeSoto, Lee and other counties, indicate that the conditions resulting from the failure of the Atlantic Coast Line Railroad Company to perform its duties to the public as a common carrier are intolerable, and not only merit, but imperatively demand, immediate and vigorous action on the part of those whose duty it is to invoke the process of the courts.

I would be very glad if you could so arrange the affairs of your office as to be present upon the occasion of the meeting at Ocala.

Herewith I return the documents above referred to as per your request.

Very respectfully,

W. H. ELLIS, Attorney General.

REQUISITIONS FOR FUGITIVES FROM JUSTICE.

Tallahassee, Fla., December 29, 1906.

Hon. Earnest Amos,
State Auditor,
Tallahassee, Fla.

Dear Sir:

Your letter of the 22d to hand.

In answer to your first question, I beg to say that when requisition is made by the Governor of this State upon the Governor of another State to which a fugitive from justice may have fled, and a sheriff is appointed as his agent to receive such fugitive from the authorities of such other State; in that case the sheriff may be deemed to be required to go beyond the limits of the State after a prisoner within the meaning of Chapter 5407 of the acts of 1905.

In reply to the second question, I have to say that in my judgment, the provisions for the payment of five cents per mile for the actual distance traveled, means the total number of miles traveled in and out of the State.

Yours Very truly,
W. H. ELLIS, Attorney General.

MISCELLANEOUS.

Tallahassee, Fla., Feb. 21, 1905.

Hon. A. C. Croom,
Comptroller.

Dear Sir:

I am in receipt of your communication of the 15th enclosing letter of Mr. C. L. Morris, of Milledgeville, Georgia.

The subject matter of the letter is the private affair of Mr. Morris, and does not require from you any action whatsoever.

Mr. Morris asks, "What can be done to restore these lands to their rightful owners?" That question might be answered by Mr. Morris's private counsel. If he or his

client have suffered by the illegal action of the Tax Assessor of Washington County, his attorney will advise him of his redress.

I herewith return letter of Mr. Morris.

Yours very truly,

W. H. ELLIS, Attorney General.

RAILROAD COMMISSIONERS.

Soliciting Business on Trains.

January 10, 1905.

Hon. Jefferson B. Browne,
Chairman Railroad Commissioners,
Tallahassee, Florida.

Dear Sir:

I am in receipt of a communication from Mr. R. C. Dunn, as Secretary of the Railroad Commissioners, enclosing a copy of a letter from John Cranor.

Mr. Cranor complains that the Atlantic Coast Line and the Florida East Coast Railroads permit one man to solicit patronage upon their cars for his livery business and refuse to allow Mr. Cranor the same privilege.

Mr. Cranor asks if the Railroad Commission "Can't do something to stop it."

There is no rule prescribed by the Commissioners which is violated by the above described regulation of the railroads. The privilege of soliciting business upon the trains is a matter, which I think, is within the power of the Railroad Company operating the train to regulate.

Respectfully,

W. H. ELLIS, Attorney General.

RATES.

Tallahassee, Fa., January 10, 1905.

Hon. Jefferson B. Browne,
Chairman Railroad Commissioners,
Tallahassee, Florida.

Dear Sir:

Your verbal request of recent date, as to the authority of the Atlantic Coast Line Railroad Company to abandon a local rate prescribed by the company, for the transportation of lumber and accept the rate prescribed by the Railroad Commissioners, has received due consideration.

I understand the facts to be: that the Railroad Commissioners adopted a standard of freight tariff for use on all the lines of the Atlantic Coast Line and the Seaboard Air Line Railroads in the State of Florida, to become operative July 1, 1903. The rate prescribed by the Commissioners for the transportation of articles in class "P" was the same as the rate prescribed by the two companies, but as a matter of fact, they had been for a while, and have been since the rate was prescribed by the Commissioners, transporting that class of freight at a lower rate. That the Atlantic Coast Line Railroad Company has recently signified its intention to enforce the Commissioners' rate for the transportation of articles in class "P."

The question is: Will this action of the Atlantic Coast Line Railroad Company involve a violation of any rule prescribed by the Commissioners, the company not having obtained from the Commissioners their consent to change from the rate under which the company has been operating?

Section 8, Chapter 4700, Laws of 1899, provides, that the written schedule of just and reasonable rates and charges for transportation of freights, etc., shall be deemed and taken in all courts as *prima facie* evidence that the rates fixed in such schedule are just and reasonable rates of charges for the transportation of freight, etc. "All rules and regulations made and prescribed by said Commissioners for the transportation of persons and property on the railroads, subject to the provisions of this act or to prevent unjust discrimination or other

abuses by them shall be deemed and held to be *prima facie* reasonable and just."

Rule 2 of Section II. prescribed by the Commissioners, provides: that, "The schedule of rates allowed and adopted by the Railroad Commissioners for each road are maximum rates which shall not be transcended. They may, however, carry at less than the rates allowed and adopted." But that rule does not preclude the Railroad Company from abandoning at any time the smaller rate and adopting the one prescribed by the Commissioners, neither does Rule Seven of Section 1, against "Increased Rates" prevent such action on the part of the railroad. While the smaller rate was a special rate, it cannot be said to be one "Authorized or prescribed by the Railroad Commissioners" within the meaning of the phrase as the same is issued in Rule Seven.

For the purposes of encouraging an industry along its line or to meet competition, a railroad company may prescribe a rate far below the rate fixed by the Commissioners, and less than the cost of transporting the articles affected by the rate. The rate fixed by the Commissioners and not the smaller one, would, under our statute, be regarded as *prima facie* reasonable and just.

I am of the opinion, therefore, that the proposed change of rate by the Atlantic Coast Line Railroad Company, from the smaller rate to the one fixed by the Commissioners violates no rule prescribed by them.

It might not be amiss to suggest to the Commissioners that when they adopt a rate, which has been prescribed by the railroad company, the burden thereupon falls upon the patron of the railroad company, as well as upon the company to show that the rate is not reasonable and just; therefore, the common law right of the citizen may in some measure be hampered to no purpose.

Respectfully,

W. H. ELLIS, Attorney General.

CLAIM FOR DAMAGES.

Tallahassee, Fla., January 11, 1905.

Hon. Jefferson B. Browne,
Chairman Railroad Commissioners,
Tallahassee, Florida.

Dear Sir:

I am in receipt of a communication from the Secretary enclosing copies of two letters from Mr. G. J. Strozier, of Winter Garden, Florida.

Mr. Strozier complains that he has great difficulty in obtaining satisfactory service from the railroad companies, presumably.

He complains that the railroad company negligently and carelessly delays the delivery to him of freight consigned to him, much to his damage and pecuniary injury. In his letter of the 17th ultimo, he asks if there is "no redress" and if he can "collect damages for such carelessness."

The Commissioners, ask for my opinion "as to Mr. Strozier's power to secure damages in the premises." The damages sustained by Mr. Strozier are unliquidated. The collection of such damages is a subject that the Commissioners have not sought to control or regulate, if, indeed, they have the power under Chapter 4700, Laws of 1899.

The negligence of the railroad company in handling Mr. Strozier's freight, if productive of damage pecuniarily to him, affords him a cause of action against the company.

Yours truly,
W. H. ELLIS, Attorney General.

Tallahassee, Fla., January 11, 1905.

Hon. Jefferson B. Browne,
Chairman Railroad Commissioners,
Tallahassee, Florida.

Dear Sir:

I am in receipt of a letter from Mr. R. C. Dunn, Secretary to the Commissioners, inclosing copy of a letter from E. E. Barkeley, address blank, also a statement signed by S. W. Gaitskill and W. E. Allen,

as to the probable damage sustained by E. E. Barkley, on account of the escape from a "stock pen" in Palatka of certain mules and horses which had been shipped to Mr. Barkley at Orange Lake, Florida.

It appears from the letter of E. E. Barkley that he had caused to be shipped to himself at Orange Lake, Florida, from Macon, Ga., a car of horses and mules; that when the car reached Palatka owing to negligence of the transportation companies, who were charged with the transportation and delivery of the live stock at their destination, they were improperly fed and watered, were delayed unnecessarily and escaped from the stock pen and were with some difficulty recovered. They reached their destination "badly skinned," diseased and in an "unsalable condition.'

This claim of Mr. Barkley's is one for unliquidated damages arising from the negligence of the carrier and its failure to perform its obligation under the contract for the transportation of the live stock. It does not arise from the violation of any regulation prescribed by the Commissioners.

I am of the opinion, therefore, that the claim is not one which the Commissioners may enforce.

Yours truly,

W. H. ELLIS, Attorney General.

SUITS, PRIVATE PARTIES.

Tallahassee, Fla., January 11,1905.

Hon. Jefferson B. Browne,
Chairman Railroad Commissioners,
Tallahassee, Florida.

Dear Sir:

I am in receipt of a letter from Mr. R. C. Dunn, Secretary to the Commissioners, enclosing a copy of a letter from Mr. H. F. Urie, Lake City, Fla., dated Dec. 28, 1904.

Mr. Urie states that he shipped a box of goods worth $150.00 to Chicago, via., S. A. L. Ry.: That the goods failed to reach destination; that the S. A. L. Ry., can show delivery to the L. & N., but so far cannot show de-

livery in Chicago. He desires to know against whom he should bring suit, should he wish to do so.

It appears from Mr. Urie's letter that the S. A. L. Ry., delivered the goods to a connecting carrier, which would seem to relieve the S. A. L. Ry., from liability.

I do not consider, however, that the law requires the Railroad Commissioners to furnish advice upon such propositions, or that my opinion upon the question submitted by Mr. Urie may be required by the Commissioners.

Yours truly,

W. H. ELLIS, Attorney General.

JURISDICTION AS TO STEAMSHIP COMPANIES.

Tallahassee, Fla., March 21, 1905.

Hon. J. B. Browne,
Chairman Railroad Commissioners,
Tallahassee, Fla.

Dear Sir:

Your communication of January 17th, enclosing correspondence between the Railroad Commissioners and Armour & Co., has been upon my desk much longer than I intended it should be, before replying thereto.

You desire to know, if the Railroad Commissioners of Florida have " Jurisdiction over Steamships of this Company, (Peninsular & Occidental Steamship Company), to the extent of requiring them to use the Florida Railroad Commissioner's classification."

I understand from your letter, that the Steamship Co., is a corporation, not controlled by nor operated in connection with any railroad company in Florida; that it operates a line of steamers between Miami and Key West, Miami and Havana, Miami and Nassau and Port Tampa and Havana, touching at Key West, and that between Miami and Key West, and Port Tampa and Key West the ships of the company that ply those waters, go outside of the three-mile limit.

Section 5 of Chapter 4700, provides that: "The provisions of this chapter shall apply to the transportation of passengers and property and to the receiving, delivery, storage and handling of property wholly within this

State, and shall apply to all railroad corporations, railroad companies and common carriers engaged in this State in the transportation of passengers or property by the railroads or common carriers therein from any point within this State to any point within this State."

The section also defines common carriers as follows: "2d. All companies and any person or persons owning and operating Steamships engaged in the transportation of freight or passengers from and to points within this State."

Section 6 of the act prescribes the powers of the Commissioners, in the matter of rates of freight and passenger tariff, and regulations for the observance of the same and other things.

Conceding that the Railroad Commissioners have jurisdiction to regulate the fares and freights for transportation on vessels engaged in commerce, purely domestic, it remains to be determined whether the Peninsular and Occidental Steamship Company, in transporting passengers and freight from Miami to Key West, and from Port Tampa to Key West is engaged in commerce purely domestic, within the meaning of the phrase "from and to ports within the State," for that phrase as it appears in the act means: that "the subject transported must be within the entire voyage under the exclusive jurisdiction of the State." Loyd vs. Steamship Co., 102 U. S. 541.

No question is presented in the case submitted, as to the jurisdiction of the Commissioners, where the vessels take up persons or merchandise to carry to a point within the State from a place without it, or from a point within the State to a point without it.

The question is: whether the transportation is within the control of the State as part of its domestic commerce if the vessels in going from one port in the State to another port in the State are required to navigate the ocean or gulf.

In the case of Pacific Coast Steamship Co. vs. Board of Railroad Commissioners, 9 Sawyer, 253, Circuit Court, District of California, the facts were very similar to the case submitted. Circuit Justice Field, in rendering the decision of the court said: Vessels are not engaged in purely domestic commerce when their voyages between ports of the same State require them to navigate the ocean. When they go beyond a marine league from the

shore, they pass out of the jurisdiction of the State, and come under the exclusive control of Congress. Your question, therefore, I answer in the negative.

I herewith return the correspondence.

Yours very truly,

W. H. ELLIS, Attorney General.

DEMURRAGE.

Tallahassee, Fla., March 22, 1905.

The Railroad Commissioners,
State of Florida,
Tallahassee, Fla.

Gentlemen:

You communication of recent date regarding the claim of the Atlantic Lumber Company vs. the S. A. L. Railway, has been received.

I have found some difficulty in understanding your statement of the case. In order that a misapprehension of the facts on my part may be corrected if you desire, I will state the case as I apprehend it.

The Atlantic Lumber Company shipped via the S. A. L. Railway to Fernandina, Fla., consigned to the Atlantic Lumber Company, care Dexter Hunter, four or more cars of dressed lumber (in box cars). Under an agreement existing between the lumber company and the railroad, the lumber company was to pay the freight and the railroad was to receive from the lumber company in payment of the freight certain freight certificates in lieu of cash. The cars arrived in Fernandina, the railroad company gave notice to the Atlantic Lumber Company, in accordance with law. By reason of the Lumber Company's failure to pay the freight, the cars were held "for periods of time varying from one to three days," after notice duly given, and after they had been placed for unloading. The freight was paid by the Lumber Company, and imediately the cars were released; that is to say, permission was given to unload. Dexter Hunter, in whose care the lumber was shipped, and to whom delivery was ordered by the Lumber Company, insisted upon "five full free days," and the railroad company permitted him to begin unloading the cars upon those terms. What was meant by "five full free days," was: five full days should

elapse between the date of the notice and removal of lumber from the cars, before demurrage should begin. A fraction of a day was considered a day. Sunday and legal holidays were not included in the five days. Hunter did not consume the five days, which the railroad company agreed he should have in unloading the cars; that is to say, "five days from the date of notice, which was given by the railroad company. (It will be observed that the consignee of dressed lumber in box cars is allowed 96 hours for unloading. That no provision is made for extra time if there are more cars than three, loaded with dressed lumber in box cars, nor is extra time provided for consignees of dressed lumber in box cars, who receive constructive notice as contemplated by rule III).

That the railroad company charged the lumber company, demurrage from the date of the arrival of the cars at Fernandina when notice of their arrival was immediately given as contemplated by Rule III, until the freight on the cars was paid, when they were immediately placed at the disposal of Hunter, who proceeded to unload the cars and consumed in the unloading less than five days from the date of their arrival in Fernandina. I do not quite apprehend your meaning, when you say that: "Dexter Hunter was the bona fide consignee." The Lumber Company had a perfect right to consign the cars to itself at Fernandina, in care of any one with whom it had such an agreement, and such consignment need not have been in bad faith. No question can rest upon that point, however, because the fact is conceded that legal notice was given the consignees immediately upon arrival of the cars.

Your statement does not show how many cars were received at Fernandina, consigned to the Lumber Co., nor how many days demurrage was charged against the Lumber Company, nor what amount was charged. From the argument made by Mr. Morgan, I gather that the amount charged against the Lumber Company was Eighty-five Dollars, "Twenty-one of which was for retention of cars after free time had elapsed." The statement that twenty-one dollars "was for retention of cars after free time had elapsed," is inconsistent with the statement submitted by you, as I have read it. I have taken the statement to mean, that "all of his free time" was not consumed, meaning Hunter's, or the Lumber Company's.

If the foregoing statement is correct, then it follows, that the railroad's claim against the Lumber Company for demurrage was not well founded. The railroad company had a right under Rule IV. Demurrage Rules, to charge one dollar per day per car, for detention after the free time expired, but as free time had not expired, demurrage had not begun.

After notice of the arrival of the cars at Fernandina, given as contemplated by Rule III, free time began to run. Under the rule, four days were allowed within which to unload, by consent, the Railroad Company made it five days. Demurrage could not be charged, therefore, until the expiration of five days from the arrival of the cars. Demurrage charged before the expiration of free time was wrong.

If the Railroad Company allowed Hunter "five full free days" after freight was paid, within which to unload, that would not give the Railroad Company the right to charge demurrage before free time began to run. Rule II requires notice to be given by the Railroad Company to consignees, promptly upon arrival of goods or cars, together with the weight and *amount* of *freight charges due thereon*, and it provides that demurrage charges may be assessed if goods are not removed in conformity with the rules, and that no demurrage charges shall be made until notice has been given by the Railroad Company to the consignee or *owner*. Rule III prescribes the notice. Rule IV fixes the demurrage charge and *when* it *shall begin*. Dexter Hunter was, so far as your statement shows, merely the agent of the Lumber Company. If he was the real consignee, I cannot perceive how the matter would be changed. The consignor was to pay freight and demurrage charges; that seems to have been a matter of agreement between the Lumber Company and the railroad. In that case, notice of the arrival of the cars had to be given to the consignee or owner before demurrage could be charged. I think the Railroad Company could have extended the free time prescribed by the rule, if it desired to do so. If any part of the free time of consignee should be consumed by the failure of the consignor to pay freight, the demurrage charges would be a matter to be adjusted between consignor and consignee.

Yours truly,

W. H. ELLIS, Attorney General.

CLASSIFICATION OF FREIGHT.

Tallahassee, Fla., October 11, 1905.

Mr. R. C. Dunn,
Secretary Railroad Commission,
Tallahassee, Fla.

Dear Sir:

In reply to your communication of the 16th ultimo, I beg to say, that it is my opinion that the Southern Weighing and Inspection Bureau has no right, nor has a railroad agent the right to open shipments of merchandise at destination to ascertain the proper classification.

I think that the matter of freight rate and classification of a particular shipment should be settled by contract at the point where it is received by the carrier.

Yours truly,
W. H. ELLIS, Attorney General.

DAMAGES.

Tallahassee, Fla., October 17, 1905.

The Hon. Railroad Commissioners,
Tallahassee, Florida.

Gentlemen:

I am in receipt of your letter of recent date, requesting my opinion upon certain questions arising from a state of facts set out in your communication.

A naval stores operator shipped from a point in this State to Jacksonville, Florida, a carload of naval stores. The shipment did not arrive at destination as quickly as the shipper thought it should have arrived, in consequence of which he claims to have sustained damages.

The claim rests upon the negligence of the Railroad Company in the handling and delivery of the freight.

A common carrier is bound to complete the transportation of goods with convenient dispatch, with such suitable means as he is required to provide for his business. In other words, the carrier must complete the transportation within a reasonable time; if he fails to do so, he becomes liable to the bailor for such damages as he may

have sustained by such negligence, unless the contract of shipment provides otherwise.

It is necessary for a jury to award the damages.

The case is not one in which the Railroad Commissioners are required, upon demand of the claimant, to institute suit against the Railroad Company in his behalf for the collection of the damages sustained.

I herewith return all the correspondence in the case.

Yours truly,

W. H. ELLIS, Attorney General.

FURNISHING OF CARS.

Tallahassee, Fla., Oct. 18, 1905.

The Honorable Railroad Commissioners,
Tallahassee, Fla.

Gentlemen:

I am in receipt of your communication of recent date, File No. 2048.

You desire my opinion upon the following question: "Can the S. A. L. Ry. be compelled by the Railroad Commission to furnish cars to the mill man at the junction of his road with the S. A. L. Ry. for the transportation of mill products or other commodities from his mill?"

The facts are, as I understand them, as follows: A man operating a saw mill has his plan located at a point five miles away from the line of the S. A. L. Ry. He built a line of road from his mill to a point on the line of road of the railroad company, in order that he might haul the products of his mill or other commodities to the line of road of the railroad company to be received by the latter for transportation over its line. The mill man owns no cars upon which to load the products of his mill or other commodities, but insists that the railroad company shall furnish such cars to him at the junction of his road and the line of the railroad company, such cars to be there taken by the mill man, hauled with his locomotive to the mill, loaded and returned by him to the railroad company at the junction, for transportation over the latter's line.

It is conceded that the railroad company does not

claim nor exercise any proprietorship over the road from the mill.

An obligation rests upon a common carrier, who holds himself out to the public as such, to provide facilities for the transportation of such freight as he holds himself out as ready to undertake to carry and when such freight is tendered to him for transportation, at a point on his line designated by him as a place for the reception of goods for transportation, he may not refuse to receive the same, nor may he refuse to furnish within a reasonable time sufficient means or facilities for the transportation of the same.

An initial carrier can not require, in the absence of a contract making provision therefor, an intermediate carrier to supply it with cars upon which to load goods received by it for transportation over its own line and that of the intermediate carrier.

A common carrier is entitled by common law to establish reasonable rules and regulations governing the manner and conditions upon which it will receive such articles as it proposes to carry, and may upon reasonable notice change such rules and regulations.

I am of the opinion, therefore, that the railroad company has the right to require, that all goods which it offers to carry, shall be delivered to it at a station on its line at which goods are received by it for transportation, and that it may not be required to furnish cars to another person, to be hauled over the latter's track at his expense which he is to load at his plant or mill and return to the railroad company at its station for transportation over its line.

Such an arrangement is the subject of contract between the railroad company and the mill man, and the Railroad Commisioners have no power to require the railroad company to enter into such an arrangement.

I herewith return all the correspondence in the case.

Yours truly,

W. H. ELLIS, Attorney General.

TRANSFERRING OF CARS FROM ONE RAILROAD TO ANOTHER, DELIVERING OF FREIGHTS TO CONNECTING CARRIERS, ETC.

Tallahasee, Oct. 18, 1905.

The Hon. Railroad Commissioners,
Tallahassee, Florida.

Gentlemen:

I am in receipt of your letter of recent date, file No. 2103, relative to car of crossties shipped by Mr. S. P. Vickers over the Atlantic Coast Line Railroad, from a point on its line to Live Oak, Florida.

You say that it was "the intention of Mr. Vickers to have car transferred to S. A. L. Ry. and thence transported to Fernandina over the S. A. L. Ry."

There is nothing in the correspondence submitted with your communication which shows that such intention was communicated by Mr. Vickers or his consignor to the A. C. L. R. R. Co., at the time the latter received the goods for shipment over its line, to Live Oak, nor is there anything to show that such intention of Mr. Vickers entered into and formed a part of his contract with the A. C. L. R. R. Co., for the transportation of the crossties to Live Oak.

I infer from the correspondence submitted with your communication, that the contract of the A. C. L. R. R. Co. was for the transportation of the crossties to Live Oak and delivery thereof to consignee at that point. This, I understand, from the correspondence, has been done.

Mr. Vickers now wishes the A. C. L. R. R. Co. to transfer the car of crossties to the tracks of the S. A. L. Railroad, a connecting carrier, to be taken by the latter company upon a new contract with Mr. Vickers or his assignee and transported to Fernandina ,Florida.

Upon the foregoing facts, you propound to me the following questions:

1st. Whether the Railroad Commissioners "have the right to compel the Atlantic Coast Line Railroad to transfer this car to the Seaboard Air Line Railway, to be thence transported to Fernandina?"

2nd. "Whether the Atlantic Coast Line Railroad Co. has the right to refuse to allow a car which is in their

possession to be transferred to another line for transportation to distination?"

3rd. "If shipper had billed car through from station on the A. C. L. R. R. to Fernandina, via the S. A. L., to be transferred at Live Oak, would the A. C. L. R R. have the right to refuse to allow their car to be transfered to the S. A. L. tracks for transportation to Fernandina?"

In answer to the first question, I beg to say, that, in my opinion, the A. C. L. R. R. Co., in the absence of any contract with the S. A. L. Ry., covering the point, is not under obligation to supply the latter with facilities for the transportation of the freight which the latter undertakes to carry, as an initial carrier, nor have the Railroad Commissioners the power to compel it so to do.

As to the second question, I have to say, that the use of the term "destination" in connection with the facts in this case is misleading. I presume it was used to refer to the place to which Mr. Vickers intended ultimately to ship the crossties, but from the viewpoint of the A. C. L. R. R. under the contract with Mr. Vickers, the "destination" of the car of crossties was Live Oak. The contract of the company was performed and its full duty was discharged when it delivered the car of ties to the consignee at Live Oak.

My answer to the third question, however, may fully cover the point.

Where a carrier receives freight destined to a point beyond the terminus of his own line, without any special agreement to carry the same to its destination, or any contract as to its delivery to any particular connecting carrier, he is not only bound to carry safely to the end of his route, but he must deliver to a safe and responsible connecting carrier for transmission to its destination. Where there is a contract in which it is agreed that the goods shall be forwarded by a certain connecting carrier at the terminus of the original carrier, it is the duty of the initial carrier to forward by the carrier designated.

The matter of the exchange of cars between common carriers is a subject which is regulated by contract between them. If the initial carrier undertakes to carry

the freight through beyond the terminus of his line to the destination of the goods, he must accomplish the undertaking and carry the freight safely.

I herewith return all the papers in the case.

Yours very truly,

W. H. ELLIS, Attorney General.

DEMURRAGE RULES.

Tallahassee, Fla., Oct. 18, 1905.

The Honorable Railroad Commissioners,
Tallahassee, Florida.

Gentlemen:

Your communication of April 21st, 1905, was misplaced by me and not until some time after your letter of September 21st, calling my atention to the same was I enabled to find it. I hope, however, that this wholly inexcusable delay has resulted in no serious injury to any one interested in the answer to be given by me to your inquiry.

You inclose a communication from Mr. W. A. Bours & Co., Jacksonville, Florida, upon which you requested my opinion as to the application of rule 8 or 11 of the Demurrage Rules of the Railroad Commission, and the liability of the railroad to pay the "complainant' demurrage charges.

I beg to say, that so far as I am able to understand the rather meager statement of facts, I am of the opinion that neither of the above numbered rules apply.

Respectfully,

W. H. ELLIS, Attorney General.

CARS.

Tallahassee, Fla., October 19, 1905.

Hon. Jefferson B. Brown,
Chairman Railroad Commission,
Tallahassee, Florida.

Dear Sir:

I am in reecipt of your inquiry as follows: "If a party has a carload of goods shipped from one point out of the State, consigned to a party in Jacksonville, who receives it and pays the freight on it, without discharging it from the car, can he then ship it to a party at some other point in the State and have it take the Florida Railroad Commissioners' rate?"

In reply I beg to say, that the owner of the goods or his agent, would have the right to ship the goods from Jacksonville to any point in the State upon the Railroad Commissioners' rate, if the same was just and reasonable, because the shipment would be strictly intra-state business. The owner of the carload of goods, however, would not have the right to insist upon the use by the company of the identical car, which may be needed by the company for other purposes, nor could he insist that the company, over whose line the goods had come, should loan or rent the identical car to another company for the purpose of the second shipment.

While a common carrier is required to supply all necessary cars and other facilities for the transportation of the freight which is tendered to him for transportation and which he holds himself out as willing to carry, he has the right to designate at what places on his line goods may be tendered for shipment, and the cars in which the goods shall be hauled. The liability of the common carrier attaches when the goods are delivered to him for carriage and they are not received by him until they are delivered at his usual place for receiving goods, to some person authorized to receive them; and he is required to provide suitable means for the transportation of the goods offered to him for shipment. This responsibility resting upon him necessitates the exercise of some judgment on his part in the matter of selecting the vehicles to be used in transporting the goods.

Yours truly,
W. H. ELLIS, Attorney General.

FENCING RAILROAD TRACKS.

Tallahassee, Fla., Oct. 19, 1905.

Hon. J. L. Morgan,
Railroad Commissioner,
Tallahassee, Florida.

Dear Sir:

Your letter of June 10th, inclosing communication from Mr. C. H. Curry, secretary and treasurer of the Florida Tobacco Company, relating to railroad crossings and fences, has been received.

I beg to refer you to Chapter 4706, Acts 1899 and amendments thereto, Chapter 5020-1901 and Chapter 5214-1903, which constitute the law of this State upon the subject of requiring railroad companies to fence their tracks.

Upon the subject of crossings and cattle guards, I refer you to Sections 2245-2279, Revised Statutes, and Chapter 4188, Acts of 1893. I also beg to refer you to a letter written by me and which appears on page 59 of the report of the Attorney General from February 15, 1904 to January 1st, 1905.

I am of the opinion that the duties and powers of the Railroad Commissioners do not require, nor do they authorize any action on their part in regard to enforcing compliance by the railroad companies with the provisions of the above named statutes, so far as they relate to crossings and cattle guards.

I herewith return the letter of Mr. Curry.

Very respectfully,
W. H. ELLIS, Attorney General.

VALUE OF L. & N. RAILROAD'S PROPERTIES.

Tallahassee, Fla., Oct. 19, 1905.

Hon. J. L. Morgan,
Acting Chairman, Railroad Commission,
Tallahassee, Florida.

Dear Sir:

Your letter of the 21st ultimo suggesting the employment of "reliable and thoroughly competent builders or

contractors to personally examine the cost of reproduction" of the L. & N. Railroad's roadbed and properties, and the roadbed and properties of other railroads interested in the "Class P" cases, for the purpose of showing by such builders and contractors the value of such properties, has been received.

The showing made by the railroad companies in those cases against the Railroad Commissioners rests upon the valuation fixed by the companies upon their properties used in the operation of their roads. It was contended by them that taking the value of their properties as a basis, they were entitled to earnings that would pay the operating expenses of their roads and a reasonable rate of interest upon their investments. What may be the true value of the roadbeds and properties used by them in operating their roads, therefore, becomes a question of very material importance upon that issue.

I think your suggestion is a good one. It would be advisable to submit the matter to the Assistant Counsel for his consideration also.

Yours truly,
W. H. ELLIS, Attorney General.

INTERSTATE SHIPMENTS.

Tallahassee, Fla., Oct. 20, 1905.

Hon. J. L. Morgan,
Acting Chairman, Railroad Commissioners,
Tallahassee, Florida.

Dear Sir:

Your letter of the 2nd instant, inclosing copy of a communication from N. A. Faulkner & Co., of Arcadia, Fla., relating to reshipment of goods in carload lots, has been received.

The facts as understood by me are as follows: Messrs. Faulkner & Co., purchased "grain and feed stuff" in car cars, in which the goods were receive dat the basing point to which there is a low freight rate." Upon the arrival of goods at destination, Messrs. Faulkner & Co., sent by mail to the railroad agent, the bills of lading and check for the amount of freight due the railroad com-

pany and requested it to ship the goods to various persons ,at different places, to whom Messrs. Faulkner & Co., had sold the merchandise. Messrs. Faulkner Co., insisted that the railroad company should use the same cars, in which the goods were reecived at the basing point, for reshipment, claiming that the cars being "solid" could have been unloaded at various points on the line. This the railroad company refused to do, but required Messrs. Faulkner & Co., to deliver the goods at the local warehouse of the railroad company for shipment.

You desire me to answer the following questions:

"Does an interstate shipment cease to be interstate on arrival at the point to which it was originally billed, and all charges paid?" and "Can the car be reconsigned to another point or points within the State as a local shipment, or must it be unloaded and hauled to the company's local warehouse or to another car before it is divested of its interstate nature?"

I think that when a shipment of goods from a point without the State to a point within the State has arrived safely and promptly at destination and been delivered to consignee, the contract for the transportation of the goods has been performed by the carrier. If the consignee then undertakes to reship the same goods to a point within the same State, as that of their original destination, he must make a new contract with the carrier for the transportation of the goods and the second shipment does not thereupon become an interstate shipment.

The carrier has the right to designate the place on his line, at which he will receive goods for transportation and being charged with the duty of safely carrying them, he has the right to designate the cars or vehicles in which the goods shall be transported.

Yours very truly,

W. H. ELLIS, Attorney General.

BIDS FOR PRINTING "CLASSIFICATIONS," FOR RAILROAD COMMISSIONER.

Tallahassee, Fla., Feb. 15, 1906.

Honorables Jefferson B. Brown,
J. L. Morgan and
R. Hudson Burr,
Tallahassee, Florida.

Gentlemen:

I am in receipt of a letter from Mr. R. C. Dunn, Secretary of the Railroad Commissioners, inclosing copy of request for bids issued by the Railroad Commissioners for the publication of Classification No. 2, and also copy of communication in which Mr. John G. Collins made his bid.

Mr. Dunn states that Mr. Collins' bid was accepted by the Railroad Commissioners, and then states that the Commissioners would like my opinion as to "whether or not the clause in the request for bids is binding upon the printer who is given the contract, and whether or not if such clause in contract is violated the printer could secure payment for the printing on the classification by a suit at law."

The clause to which reference is made in the letter, I presume, is the one relating to the deduction of five per cent., for each day, from the contract price of the work, in the event the printing of the Classification is delayed beyond September 15th.

On the 13th of July, 1905, the Secretary of the Commission addressed a letter to the True Democrat, Tallahassee, Florida, which announced that the Commission was sending a copy of their classification No. 1, which they wished reprinted, together with rules and certain changes; that it was estimated that there would be about seventy-five pages; that proof would be furnished the successful bidder on August 1st; that work should be completed and delivered by September 15th; that like quality of paper and cover was to be used; requiring that revised copy of proof should be furnished the Commissioners, which after being corrected, a further revised copy should be submitted. The letter announced, that for each day that the delivery of the total number of Classifications to be printed is delayed beyond September 15th,

a deduction of five per cent. of the contract price of the work would be made, and that bids for the work should be made upon that condition. The letter to the Democrat thereupon announced its desire for bids in the following language: "If you desire to bid, the Commission would be pleased to have you advise them what you will charge per page for printing 3,000 copies of this Classification."

On July 24th, Mr. John G. Collins, addressed to the Honorable Railroad Commissioners a letter in which he stated that, "In response to your invitation to bid on Classification and Rules and Regulations as per sample mailed us, we respectfully submit our figures on same as follows": Thereupon follows the proposition of Mr. Collins, to print 3,000 copies "finished and delivered within the time required, on quality of stock called for in sample, neatly printed" at a price per page, undertaking to print, bind and deliver the same. The Railroad Commissioners accepted this proposition, and, in my judgment, this constitutes the contract without reference to the Commissioners' letter of July 13th, reason o fthe fact that there could be exacted from the contract price for each day the work was delayed beyond the 15th. If that five per cent. clause could be regarded as a part of the contract for the printing of the classification, it would, in my judgment, be considered as a penalty and not as liquidated damages, by reason of the fact that there would be exacted from the contractor under such a provision a sum largely in excess of the real damage which would be sustained by the delay in printing. The utmost, therefore, which may be exacted from Mr. Collins is compensation for the damage actually sustained.

Having undertaken to answer the question propounded to me by the Commissioners, I beg to close this letter by reference to Section 7 of Chapter 4700, laws of 1899, which provides, among other things, that: "In all work devolving upon the Railroad Commission prescribed by this act, they shall receive upon application the services of the Attorney General of the State," etc.

The work of making contracts for whatever printing may be required under the act, is not a work devolving upon the Railroad Commissioner under the act. Therefore the services of the Attorney General may not be re-

quired in the matter of determining the effect of the action of the Commissioners in accepting bids for the printing which may be required by them.

The work of making contracts for the public printing of the State, in my judgment, devolves upon the Board of Commissioners of State Institutions.

I submit the above point for your consideration in order that you may be advised that my views upon the question submitted to me may not be regarded as controlling the judgment of the members of the Railroad Commission in whatever course they may decide to take in the matter of a settlement with Mr. Collins.

Yours very truly,
W. H. ELLIS, Attorney General.

POWER OF RAILROAD COMMISSIONERS TO ORDER CHANGE OF GAUGE IN ROAD.

Tallahassee, Fla., February 24, 1906.

Hon. Jefferson B. Browne, Chairman,
Railroad Commissioners,
Capitol.

Dear Sir:

Your communication of recent date requesting my opinion as to the power of the Railroad Commissioners of Florida "to order change in the gauge of a railroad operating in the State of Florida" has been received.

The Florida Midland Railroad Company owned a line of road from Kissimmee to Apopka, and sold the line to the Plant System. At the time of the sale the road was of the standard gauge. The Plant System changed the gauge to a narrow gauge. The road was afterward acquired by the Atlantic Coast Line, who operates it now as a narrow gauge road.

The Railroad Commission of Florida possesses no power except that which the statute expressly confers upon it. Its powers will not be extended by implication, and its acts will not be upheld unless the authority therefor can be affirmatively shown to be within the power conferred upon it.

The purpose of the Railroad Commission Law of 1899 was to provide for the "regulation of railroad schedules, freights, express, sleeping car and passenger *tariffs*, and

building of freight and passenger depots in this State; to prevent unjust discrimination in the *rates* charged for the *transportation* of passengers and freight and to prohibit railroad companies, corporations and all common carriers in this State from *charging* other than just and reasonable rates," etc. The title of the act thus clearly indicates its purpose and subject.

The provisions of the act granting power to the Commissioners are limited to the operation of the roads, in the matter of freight and passenger tariffs, the transportation of railroad cars, the making of rates for connecting roads, the establishment of depots, both freight and passenger, *as the condition of the road,* safety and convenience of passengers, etc., may justify; to regulate and control passenger terminals or union depot companies, to regulate charges for storage and charges for refrigerator cars.

The Commission is given power to require a railroad company to properly *operate its* railroad or transportation line, and to furnish all necessary facilities for the convenience and prompt handling, transportation and delivery of all freight offered along its *line* for transportation.

I do not regard the power given in the act to be full enough to enable the Commissioners to order the railroad company to change the gauge of its road, nor construct any particular kind of roadbed. The power is limited or confined, as I interpret the act, to the regulation of schedules, freight and passenger tariffs, and the transportation of cars, the establishment of depots and to regulate charges for storage, etc.

Yours very truly,
W. H. ELLIS, Attorney General.

CARRIERS LIABILITY FOR DELIVERY.

Tallahassee, Fla., March 26, 1906.

Hon. Jefferson B. Browne,
Chairman Railroad Commissioners,
Tallahassee, Florida.

Dear Sir:

In reply to the cummunications of the Commissioners of recent date, relating to the claims of Mr. A. Williams,

of Live Oak, against the S. A. L.; S. L. Lupfer, of Kissimmee, Florida, against the Southern Express Company, and in regard to the power of the Commissioners to order a change of schedule on certain railroads to meet the request of petitioners for such change,I beg to say: It is my opinion, that from the facts as stated by Mr. Williams, he has a remedy against the S. A. L. Railway for breach of the contract as expressed in the bill of lading.

As to the claim of Mr. Lupfer, it is not a matter over which the Railroad Commissioners have any control. In deference to your request, however, for my opinion of the merits of Mr. Lupfer's claim, I submit that a carrier's common law liability, as an insurer for loss or injury to the goods, does not cover damages on account of delay in delivering. He must use due diligence in transporting goods, and negligence will render him liable for failure to deliver promptly. If damages result from the carrier's failure to deliver the goods at their destination within a reasonable time, and the shipper can show negligence on the part of the carrier, he is liable for the damage.

As to the change of schedule to meet the requirement of the public, I am of the opinion that the Commissioners have the power to require the establishment of such schedules as public comfort and convenience may reasonably demand.

I herewith return the correspondence and bill of lading in the Williams matter.

Yours truly,
W. H. ELLIS, Attorney General.

VALIDITY OF RULE THREE OF RAILROAD COMMISSION.

Tallahassee, Fla., March 28, 1906.

Hon Jefferson B. Browne,
Chairman Railroad Commissioners,
Tallahassee, Florida.

Dear Sir:

I am in receipt of your letter of recent date, requesting my opinion upon the validity of Rule 3, promulgated by the Railroad Commissioners, and which provides that: "No railroad company shall decline or refuse to act as

a common carrier, to transport any article proper for transportation, and a failure to transport such article within a *reasonable time* after the same has been offered for transportation shall be deemed a violation of this rule."

Under Chapter 4700, Laws of Florida, the Railroad Commissioners of this State have full power and authority to require railroad companies to properly operate their lines and to furnish all the necessary facilities for the convenient and prompt handling, transportation and delivery of all freights offered along their lines for transportation. In the exercise of this power the Railroad Commissioners adopted the above quoted rule.

The act provides for the enforcement of the rule by imposing a penalty for its violation.

You ask me, if in my opinion the words: "A failure to transport such articles within a reasonable time after the same has been offered for transportation shall be deemed a violation of this rule," which constitute the amendment to the rule as originally adopted, are sufficiently specific to be made the basis for the imposition of a penalty or fine, or should the rule state a time certain within which the railroads shall transport such articles.

I am of the opinion that the rule as originally adopted was not improved by the amendment which is vague and uncertain, rendering it impossible for a railroad company to know when it has violated the rule against its refusing to act as a common carrier. No standard is fixed by which it may be determined what is a reasonable time, which question necessarily depends upon numerous and complicated circumstances. The rule as originally adopted was directed against the refusal by railroads to act as common carriers; the amendment seeks to establish a rule of evidence by which it may be determined when the rule is violated.

Ithink that the amendment is invalid, not only because of its indefiniteness, but because the Commissioners have no power to change the rules of evidence. I think, however, that the invalid portion of the rule does not affect the rule as it existed originally, which is a valid exercise of the power vested by law in the Commissioners

A refusal to furnish cars for the transportation of

articles fit for transportation, I think, would be equivalent to a refusal to act as a common carrier.

Yours truly,
W. H. ELLIS, Attorney General.

TOLL BRIDGE AND CHARGES.

Tallahassee, Fla., April 16, 1906

Hon. J. L. Morgan,
Acting Chairman, Railroad Commissioners.
City.

Dear Sir:

I am in receipt of your letter of recent date asking if, in my opinion, the provisions of Chapter 5423, Laws of 1905, may be enforced as against a corporation, whose charter authorized the building of a toll bridge across the Matanzas River, and to charge toll for the use of the bridge, not to exceed certain maximum rates fixed by the charter.

You also ask if the tracks of the St. Augustine and South Beach Railroad, which are laid upon the bridge built under said charter, may be treated as a part of the main line of the Railroad Company.

In reply to the first question, I have to say, that Chapter 4279, Laws of 1893, which constitutes the charter of the St. Augustine Bridge Company, does not, in my opinion, amount to a renunciation of legislative control over the toll rates to be charged for the use of the bridge. The grant shows a purpose merely to confer the power to exact compensation for the use of the bridge that shall be reasonable and just.

The act is not an unmistakable manifestation of a purpose to give to the Bridge Company the unrestricted right to charge what rates it may choose within the limits prescribed. The maximum rates prescribed do not pretend to cover all cases in which the bridge may be used for the convenience of the public. Therefore, I think that the Commissioners may fix and regulate the tolls, charges and hours of keeping open for traffic, the toll bridge erected by said company over the Matanzas River, in accordance with the provisions of Chapter 5423, Laws of 1905.

As to the second question I have to say, that there

appears to me no reason why that portion of the tract of the St. Augustine and South Beach Railroad, which is laid upon the bridge across the Matanzas River and constitutes part of the main line of the Railroad Company, may not be so treated by the Commissioners inconsidering the question of reasonable rates for the transportation of passengers and freight over the said railroad.

Yours truly,
W. H. ELLIS, Attorney General.

WEIGHING OF CARS.

Tallahassee, Fla., May 24, 1906.

Hon. Jefferson B. Browne,
Chairman Railroad Commission,
Tallahassee, Florida.

Dear Sir:

In regard to your inquiry as to the power of the Commissioners to require transportation companies to weigh carloads of melons received by them for transportation, either within the State or at destination, which may be out of the State, I beg to say, that I think the Railroad Commissioners have the power under Section 6 of the Act of 1899, to require railroad companies receiving goods for transportation in this State to give the weight of same; and I think they may be required, when they receive carloads of merchandise for transportation, to give at the initial point weight of such cars, or if there is no tracks scales at that point, require them to weigh the car at some other point in the State.

I herewith return letter of Mr. Luffman.

Yours very truly,
W. H. ELLIS, Attorney General.

CONTRACT BETWEEN A COMPRESS COMPANY AND S. A. L. R. R. Co.

Tallahassee, Fla., June 15, 1906.

The Railroad Commissioners,
State of Florida,
Tallahassee, Fla.

Gentlemen:

I am in receipt of your letter of the 8th inst., inclosing a letter of the Florida Warehouse and Compress Company, under date of June 7th. I note your request to examine the letter of the Compress Co., and to suggest what, if any, remedy that company may have for the wrongs complained of therein. I also note your request to advise you if the Railroad Commissioners could, upon the facts stated in the Compress Company's letter, make out a case that could be carried to the Interstate Commerce Commission and thus render assistance to complainant.

I understand from the letter of the Compress Company, that it is engaged in the business of compressing bales of cotton; that its compress was erected on the line of the Florida Central and Peninsula Railroad, now the Seaboard Air Line Railway; that under an agreement with "said railroad," the latter was to "transport all cotton offered for shipment on its line of road to the said compress for compression and to pay the Compress Company a stipulated sum per hundred pounds for its services." This contract, the Compress Company claims, has been during the past several seasons ignored and broken by the Railroad Company.

I am of the opinion, that it is not part of the duty of the Railroad Commissioners to attempt an adjustment between the Compress Company and the Railroad Company of the differences which have arisen between them because of the violation of the contract. It is not clear to me, in view of the fact that the violation of the contract by the Railroad Company has resulted in placing other cotton buyers in the field, how it results in restraint of trade, but if it did, I do not understand it to be the duty of the Railroad Commission to attempt to adjust it, unless it should appear that the through rates on the cotton out of Florida were excessive, unreasonable or discriminating in their nature. In that case it would be the duty of the Railroad Comissioners to call the attention of the railroad officials in Florida to the fact, and to urge upon

them the propriety of changing the rates, which, if they refused to do, would necessitate the application of the Railroad Commissioners to the Interstate Commerce Commission for relief.

I herewith return the letter of the Florida Warehouse and Compress Company.

Yours respectfully,
W. H. ELLIS, Attorney General.

POWER OF RAILROAD COMMISSIONERS TO FORCE CERTAIN CLAIMS FOR DEMURRAGE.

Tallahassee, Fla., June 16, 1906.

The Hon. Railroad Commissioners,
Tallahassee, Fla.

Gentlemen:

I am in receipt of your communication of recent date inclosing papers relating to claim No. 1740 for demurrage on carload shipment from an out of the State point.

You request my opinion as to the power of the Commissioners to force the claim for demurrage on interstate shipments in this and similar cases. In reply, I beg to say, that I am of the opinion that Chapter 4700, Laws of Florida, vests the Railroad Commissioners of this State with full power and authority to provide and prescribe demurrage rulles and regulations which may be necessary to secure prompt handling, transportation and delivery of all freight offered along the line of any railroad in this State for transportation.

I observe that the railroad company against whom the claim for demurrage in this case arose declines to pay the demurrage upon several grounds. First, because of the failure of the consignee to pay the freight promptly; secondly, because the cars were ordered to a connecting line, and thirdly, because the "penalty rules, issued by the Railroad Commission of Florida, do not apply to interstate shipments."

I will consider the last objection only.

The principle which pervades the decisions of the Supreme Court of the United States, where State statutes assume to lay a burden upon interstate commerce is, that only such legislation by the States is inhibited by the Constitution of the United States, as impedes, ob-

structs or controls, or comes in conflict with some statute passed by Congress to regulate it. It has often been held that State statutes which affect interstate commerce, without amounting to a regulation of it, are valid, and it is undoubtedly true that "so long as the State legislation is not in conflict with any law passed by Congress in pursuance of its powers, and is merely intended and operates in fact to aid commerce and to expedite, instead of hindering the safe and prompt transportation of persons and property from one State to another, it is not repugnant to the Constitution of the United States, and will be enforced either as supplementary to partial Federal statutes relating to the same subject or in lieu of such legislation where Congress has not exercised its powers at all."

I regard the demurrage rules prescribed by the Railroad Commissioners as intended for the convenience of the citizens of the State, whose property is handled by railroad companies for transportation, and are designed to facilitate and expedite the prompt handling thereof, and cannot be construed in any way other than as an aid to commerce, whether intra or interstate, and on this ground I think that the rules are valid.

Yours very truly,

W. H. ELLIS, Attorney General.

DEMURRAGE.

Tallahassee, Fla., October 12, 1906.

The Hon. Railroad Commissioners,

Tallahassee, Fla.

Gentlemen:

In regard to your communication of recent date on the subject of the claim of the Ensign Lumber Company of Jacksonville, Florida, I beg to say, that in my judgment the Ensign Lumber Company has no claim for demurrage, under the rules prescribed by the Railroad Commissioners, against the Atlantic Coast Line.

I herewith return the correspondence in the case.

Yours very truly

W. H. ELLIS, Attorney General.

POWER OF RAILROAD COMMISSIONERS TO PRESCRIBE JOINT RATES.

Tallahassee, Fla., October 12, 1906.

The Honorable Railroad Commissioners,
Tallahassee, Florida.

Gentlemen:

Your communication of recent date regarding claim No. 1762, made by Mr. H. F. Dobbin, of Altoona, Fla., has been received.

I understand from your communication that the claim of Mr. Dobbin arises from an alleged overcharge by the Railroad Company and the Steamship Line on freight from Jacksonville to Altoona, via Astor, a point on the St. Johns River to which the road of the Atlantic Coast Line extends.

The rate charged for the transportation of such freight seems to be a joint rate agreed upon by the Steamship Company and the Atlantic Coast Line Railway.

I am of the opinion that the Railroad Commissioners have not the power to prescribe a joint rate for railroad and steamship companies.

I herewith return the papers in the case.

Yours very truly,
W. H. ELLIS, Attorney General.

VALIDITY OF DEMURRAGE RULES.

Tallahassee, Fla., October 12, 1906.

The Hon. Railroad Commissioners,
Tallahassee, Fla.

Gentlemen:

Your communication of recent date regarding claim No. 1688, by Mr. St. Elmo W. Acosta, against the Atlantic Coast Line Railway has been received. In reply, I beg to say that the statement of facts in the documents accompanying your letter is not full enough for me to give an opinion upon that particular claim. I judge, however, that it involves the question of the validity of the demurrage rules prescribed by the Railroad Commissioners as applied to interstate shipments.

My investigation on that subject has not led me to change my views as expressed in a former communication.

I note that you direct me to institute suit in behalf of Mr. Acosta against the Atlantic Coast Line for the recovery of the amount of his claim, $4.00. I respectfully ask that you defer the institution of this suit until I can be more thoroughly informed as to the facts involved.

I herewith return the papers in the matter.

Yours very truly,

W. H. ELLIS, Attorney General.

LETTERS OF THE ATTORNEY GENERAL.

The following are some of the letters written in answer to the unofficial communications referred to heretofore in this report. These letters are of a general character, and may be of some benefit to county officials and the public generally; therefore, they are incorporated herein.

TAXES.

Tallahassee, Fla., January 6, 1905.

Dear Sir:

Your letter of the 3rd instant has been received.

The question which you submit to me should be submitted to the attorney for the corporation of Anthony. The Attorney General is not the legal advisor of either city or county officials; if he undertook to act as counsel for city and county officials, it would be impossible for him to perform a very small part of his official duties; however, I will do the best I can for you upon the question submitted.

I understand the question to be as follows: Is a resident of the town of Anthony liable for street tax, who owns property in the county of Marion outside of the town of Anthony, and who pays a special tax for public roads, bridges and river crossings levied by the Board of County Commissioners under Chapter 5235 of the Laws of 1903? I assume that the Town Council of Anthony has adopted an ordinance for the keeping of the public roads and streets within the limits of the town in good repair under Chapter 4772, Laws of 1899. Section 1 of the act, requires the citizens of incorporated towns to keep the public roads and streets in the limits of such towns in good repair, agreeable to such ordinance as may be enacted by the Town Council and approved by the Mayor. The authority granted to the County Commissioners to levy a special road tax under Chapter 4338, Laws of 1895, as amended by Chapter 5235, Laws of 1903, does not conflict with the authority vested in incorporated

cities and towns to adopt such ordinances as may be necessary to keep the streets and roads in such towns in good repair.

Section II of Chapter 4338 provides that no person residing in any incorporated town or city, and who pays municipal taxes, shall be required to work on the public roads under this law. But it does not follow that any one who pays a county tax is exempt from working the streets in any incorporated city or town under ordinances authorized by Chapter 4772 of the Acts of 1899. It seems to me, therefore, that the person referred to in your letter is subject to the tax imposed by the Town Council of the town of Anthony.

Yours very truly,

W. H. ELLIS, Attorney General.

FENCES.

Tallahassee, Fla., January 6, 1905.

Dear Sir:

Your letter of December 28th has been received.

Chapter 4045 of the Acts of 1891 is the only act that I am aware of that related to the subject.

Section 2 of the act provides, that whoever shall wilfully lay or throw down the fence or bars, or open the gate of another, or with evil intent, by any other means, interfere with the fence of another person, and thereby expose crops or other property to waste without the consent of the owner or person occupying the same, shall be deemed guilty of a misdemeanor.

The gravamen of the offense is the malicious intent. Your letter, however, supposes the case of a person, who, without an intent to commit an offense, carelessly leaves the gate open. I know of no statute which makes such act punishable.

Yours very truly,

W. H. ELLIS, Attorney General.

FISHING WITH SEINES.

Tallahassee, Fla., January 6, 1905.

Dear Sir:

Your letter of December 12th, which was addressed to me at Quincy, Florida, has just been received.

You ask if it would be a misdemeanor to seine the lakes, known as Mary, Hart and Preston, which are in Orange County.

Now assuming that you desire to catch fish by seining those lakes, not for your own consumption, but for shipment, and assuming that the lakes are not on your land, I will state that the Act of 1899 makes such operations a misdemeanor, the fine not exceeding $200.00, or imprisonment not exceeding six months. When any person is found on any of the lakes in a boat or boats containing nets or seines it is prima facie evidence of his guilt.

Yours very truly,

W. H. ELLIS, Attorney General.

LICENSE.

Tallahassee, Fla., Jan. 7, 1905.

Dear Sir:

I know of no provisions of law which authorize an administrator of one's estate to carry on the sale of intoxicating liquors under the license which had been issued to the deceased.

Section 3 of Chapter 5106 of the Laws of 1903, provides, that the license to sell spirituous liquors, shall be transferred only to a person who has complied with all the prerequisites of obtaining licenses prescribed by existing laws, for the sale of spirituous, vinous or malt liquors.

Yours very truly,

W. H. ELLIS, Attorney General.

RESIDENCE OF JUSTICE OF THE PEACE.

Tallahassee, Fla., January 7, 1905.

Dear Sir:

I am in receipt of your favor of the 23rd inst., asking

me the question, if you could reside in one county and hold the position of justice of the peace in another county.

In reply I beg to state, that it is my opinion that your residence in one county precludes you from holding the office of justice of the peace in another county. The office of justice of the peace is a district office, and I think the duties of the office must be discharged by one who is a resident of the particular district.

The authorities hold, that a justice of the peace must reside in the sub-district or territory to which the office is appurtenent and must have his office located within that territory.

Yours very truly,
W. H. ELLIS, Attorney General.

DESCENT OF ESTATES.

Tallahassee, Fla., January 7, 1905.

Dear Sir:

Your letter of January 4th to hand.

Section 1819 of the Revised Statutes, provides that the doctrine of the right of survivorship in cases of real estate and personal property, held by joint tenants, shall not prevail in this State.

Section 1820 of the Revised Statutes provides, that, when any person having title to real estate of inheritance shall die intestate as to such estate, it shall descend in parcenary to the male and female kindred in the following course, that is to say:

To the children of their descendants and the husband, if the decedent be a married woman and the husband survive her.

If there be no children or their descendants, and the decedent be a married woman and her husband survive her, all the property, real and personal, shall go to the husband; and if there be no children or their descendants, and the decedent be a married man and his wife survive him, all his property, real and personal, shall go to the wife. If there be no children and no husband or wife, then to the father, and so on.

Yours very truly,
W. H. ELLIS, Attorney General.

COUNTY SCHOOL FUND.

Tallahassee, Fla., Jan. 7, 1905.

Dear Sir:

Chapter 4332, laws of 1895, has not been repealed.

Section 3 of the act provides that the itemized financial statement should show all sums of money received during the month next preceding, on account of county school funds, and from whom received, and from what source derived; all appropriations made by such board and for what purpose made; all warrants drawn by such Board in whose favor and for and on what account drawn, describing such warrant by date, number and amount.

It seems to me it is clear enough to be readily understood.

The first example given in your letter is certainly the correct form to use in the monthly statements.

Yours very truly,

W. H. ELLIS, Attorney General.

CLERK OF COUNTY COMMISSIONERS.

Tallahassee, Fla., Jan. 18, 1905.

Dear Sir:

I understand from your letter, that you have made a contract with the County Commissioners of Holmes County, to receive as compensation for your services, the regular fees as prescribed by Section 1394 of the Revised Statutes. You refer to Section 1395 of the Revised Statutes as amended by Chapter 4909 Acts of 1901. That section and chapter simply authorizes the Board of County Commissioners to fix the compensation of the clerk and prescribes a standard by which that compensation shall be determined. I think it is entirely within the power of the Board of County Commissioners to agree with the clerk to compensate him for all work done upon the fee system and that they may agree that such fees may be charged as are prescribed by Section 1394 of the Revised Statutes.

Now if such is the agreement between you and the Board of County Commissioners, then it follows that for writing every warrant you are entitled to twenty cents

for the first one hundred words. My impression is that the law does not require the seal of the Circuit Court to be affixed to county warrants. The law requires the seal of the County Commissioners to be affixed to all warrants. Section 1394 does not contemplate the payment of ten cents as a fee for affixing the seal to county warrants.

Yours truly,
W. H. ELLIS, Attorney General.

ROAD TAX.

Tallahassee, Fla., Jan. 24, 1905.

Dear Sir:

Chapter 4338, of the Acts of 1895, has been amended several times ,the last amendment being to Sections 20 and 22, by Chapters 5235, 5237 and 5236 of the laws of 1903.

Chapter 5235 provides that: "In any county in this State where county commissioners shall decide to levy a tax for the purpose of keeping in repair the public roads, bridges and river crossings as provided for in Section 20 of this Act, no person residing in, owning and paying taxes on real estate located in said county shall be required to work upon the roads and bridges in said county, but shall be exempt from road duty where said commissioners shall levy a tax of more than two mills for the purpose of keeping in repair and working the roads, bridges and river crossings in said county."

Chapter 5236 makes a slight alteration in Chapter 5235 and makes such exemption from road duty depend upon the levy of a tax of more than one mill.

I am of the opinion, therefore, that where the county levies a tax of three mills, as provided for in Section 20 and 21 of Chapter 4338, that every person living in the county, who would otherwise be subject to road duty, would be exempt from such road duty, provided he paid a road tax, which means that if he had any real or personal property in the county upon which a tax had been levied for road purposes and he had paid such tax, he would be exempt.

These requests for my opinion are not authorized by

any statute, of which I am aware, and, consequently, my opinion can not be regarded in any sense official. These matters should be referred to the county attorney for his consideration and advice. If the county commissioners have not employed an attorney to advise them they ought to do so whenever they desire legal advice.

Yours very truly,
W. H. ELLIS, Attorney General.

COUNTY JUDGE, MAYOR, SHERIFF.

Tallahassee, Fla., Jan. 24, 1905.

Dear Sir:

I am in receipt of your favor of the 20th inst., in which is contained the following questions:

1st. Is the County Judge authorized to discharge a defendant when the State offers no evidence to prove that he committed the offence with which he was charged? (Shooting with intent to kill).

2nd. Has the mayor of a town or city the right to try the same defendant, for violating a town or city ordinance and convict and fine him upon the charge (Shooting in the town or city limits) when the shooting with which the person is charged is the same shooting for which he was arraigned in the County Judge's Court, upon the charge of shooting with intent to kill?

3rd. Can the sheriff issue a warrant?

In answer to the first question, will say, that the County Judge is authorized to discharge the defendant.

To the second question, will say that the mayor has a right to try, convict and fine the same defendant for violating a city or town ordinance.

The third is answered by saying that the sherif has no right to issue a warrant.

Yours very truly,
W. H. ELLIS, Attorney General.

VACANCIES IN OFFICE.

Tallahassee, Fla., Jan. 24, 1905.

Dear Sir:

Your letter of the 20th inst. has been received.

Section 8 of Article III, of the Constitution, provides that "the seat of a member of either House shall be vacated on his permanent change of residence from the district or county from which he was elected.'

Chapter 4328, laws of 1895, provides, that "a special election shall be held when a vacancy shall occur in the office of State Senator or member of the House of Representatives of this State."

Section 7 provides the manner in which the special election shall be called.

You state that you would like to have my opinion upon the question of whether Mr. Brown's seat would be declared vacant under existing circumstances. If you will state the circumstances and get them in some official form and submit them to the Governor whose duty it is to call a special election, he will doubtless take some action in the matter.

You will observe that the language of the Constitution is that his seat shall be vacated on his permanent change of residence.

What constitutes a permanent change of residence, seems to me, to be a perplexing question and into it enters the elements of time and intention. The first we can swear to, but the latter is a matter largely of speculation.

Should you desire to present the matter to Governor Broward, I suggest that the question of whether there has been a permanent change of residence be fully considered by you and let the representation be made to the Governor, that there has been a permanent change of residence by Senator Brown, should you arrive at that conclusion.

That question ought to be determined by the Governor, for he cannot act in a judicial capacity, and should he call an election and some one else be chosen, the Senate would have to pass upon the qualifications of the contestants, if there should be a contest.

I do not know what the circumstances are as to Mr.

Brown's change of residence, and, consequently, I can not decide whether there has been a permanent change or not.

Yours very truly,

W. H. ELLIS, Attorney General.

Tallahassee, Fla., Jan. 24, 1905.

Gentlemen:

I have investigated the question presented by the death of Mr. Durrance, as carefully as time and opportunity afforded and I have read your letter which embraces your opinion upon the matter with considerable interest. I am compelled, however, to differ from you in the conclusion which you reach.

The facts I understand to be as follows: Judge Pooser was County Judge; at the last election Mr. Durrance was elected to fill that office for the term beginning the first Tuesday in January, 1905, upon which date the term of office of Judge Pooser expired. Mr. Durrance had in compliance with law executed his bond, signed the oath of office, had received his commission and was qualified to hold the office, and that on Monday, the 2nd of January, he died. The question is, was there a vacancy in the office on the first Tuesday of January?

Section 7, of Article IV., of the Constitution provides that "when any office from any cause shall become vacant and no mode is provided by this Constitution or by the laws of the State for filling such vacancy, the Governor shall have the power to fill such vacancy by granting a commission for the unexpired term." That section of the Constitution constitutes the authority of the Governor for filling vacancies in office. The office of County Judge is an elective office and the Governor has no authority to appoint a County Judge until a vacancy has been created.

It follows, therefore, that if the death of Mr. Durrance did not create a vacancy in the office of County Judge, the Governor would have no authority to appoint a County Judge, nor indeed would there be any occasion for the appointment of such an officer.

Now Section 14 of Article XVI of the Constitution provides, "All State, County and Municipal officers shall continue in office after the expiration of their official term until their successors are duly qualified." This sec-

tion in the Constitution is the authority which officers have for holding over after the expiration of their official term, and that right to hold over is limited by the act by which his sucessor becomes qualified. The last election determined who should be Judge Pooser's successor, therefore Judge Pooser's authority to continue in office after his term expired depended upon his successor's failing to qualify for a period after the beginning of the new term. If that period continued too long the Governor could declare the office vacant. If one qualified before the term of office began, the right of the incumbent to continue in office after the expiration of his term, necessarily ceased. The question, therefore, turns upon what constitutes qualification within the meaning of Section 14 of Article XVI of the Constitution. The only authority which I have been able to find upon the subject is the case of the State of Missouri ex rel., Attorney General vs. Abram J. Seay, 64 Mo., 89; in which case it was held, where one who was elected Judge of the Circuit Court and received his commission from the Governor and took and subscribed to the oath of office, and died two days before he was to assume the duties of the office that his death created a vacancy in the office, although his predecessor was in office at the time of his death and the Constitution provided that he should hold office until his successor is elected and qualified. That was a case almost on all-fours with yours, and Judge Henry, in an able decision, in which he reviewed numerous authorities, arrived at the above conclusion.

Yours truly,

W. H. ELLIS, Attorney General.

COUNTY OFFICER.

Tallahassee, Fla., Jan. 25, 1905.

Dear Sir:

Your letter of the 24th has been received. You ask if a Justice of the Peace is a County Officer within the meaning of Section 14, Article XVI and Section 21, Article V of the Constitution. In an opinion rendered by Chief Justice Randall, to the Governor of Florida, he arrived at the conclusion, that a county officer is one which is usually

provided in the organization of counties and county governments, whose duties pertain and are limited to the territory of a county and to the local and domestic concerns appertaining thereto.

Mr. Justice Westcott held that where the Constitution designated the party as a county officer and his authority extends throughout the limits of the county and his duties appertain to the county, he is a county officer.

Mr. Justice Hart held that Justices of the Peace are county officers. These opinions were written under the Constitution of 1868.

Now the Constitution of 1885 expressly provides for the election of Justices of the Peace in each county; it defines their powers and jurisdiction and limits the exercise of their functions to the county in which they are elected. I think, therefore, that a Justice of the Peace is a county officer within the meaning of Section 14 of Article XVI of the Constitution.

Yours truly,

W. H. ELLIS, Attorney General.

LICENSES, OPERA HOUSES.

Tallahassee, Fla., Jan. 25, 1905.

Dear Sir:

I am in receipt of your communication of the 23rd instant, relative to the license of the Opera House feature of the Quincy Fire Department.

The first proviso to Section 28, of Chapter 5106 laws of 1903 reads as follows:

"That managers of theatres or halls employing traveling troupes, theatrical, operatic or minstrel, giving performances in buildings fitted up for such purpose, shall be allowed to give as many performances in such building or theatre as they wish on payment of the following license:" "In cities of less than five thousand inhabitants, ten dollars per annum." The second proviso reads, "Provided, however, that this section shall not apply to local amature performances."

The license required to be paid by managers of opera

houses in cities of less than five thousand inhabitants is ten dollars. There is no special license required for amature performances.

Yours very truly,
W. H. ELLIS, Attorney General.

NON-RESIDENTS, TO PAY LICENSE TO HUNT.

Tallahassee, Fla., Jan. 26, 1905.

Dear Sir:

I am in receipt of your favor of the 25th instant relative to non-residents paying license for hunting.

Section 6, of Chapter 5251, laws of 1903, provides, "That all non-residents of the State, before hunting for the purpose of killing any wild game in this State, shall apply to the Clerk of the Circuit Court of the county, the said non-resident proposes to hunt in, and upon the payment of ten dollars ($10.00) to the said clerk by the applicant, the clerk shall issue a permit to hunt in said county ,only as provided for in this act, and the same shall not be transferable and it shall be unlawful for any non-rseident of this State to hunt in this State without first obtaining said permit," etc.

The above is the law applicable to non-residents, who desire to hunt in this State.

I think your idea as to who are non-residents is correct.

Yours truly,
W. H. ELLIS, Attorney General.

COUNTY TREASURER.

Tallahassee, Fla., Jan. 30, 1905.

Dear Sir:

I am in receipt of your letter of the 24th instant relative to the fees of County Treasurer.

Under Section 615 of the Revised Statutes, County Treasurers are to receive one and one-half per cent. for receiving the first five hundred dollars and for all over

five hundred dollars one per cent.; the same fees being allowed for disbursing.

Inasmuch as the Section does not mention anything at all about the different funds, I take it that the fees are based on the total amount received and disbursed without regard to the different funds.

Yours very truly,
W. H. ELLIS, Attorney General.

RE-ESTABLISHMENT OF TAX CERTIFICATES.

Tallahassee, Fla., Jan. 31, 1905.

Dear Sir:

Your letter of January 13th has been received.

It occurs to me that the plan suggested by you for the re-establishment of the tax certificates of Holmes County, while entirely feasible, is not expedient.

Section 1513 of the Revised Statutes provides for the filing of a petition to establish any paper, record or file which may have been lost or destroyed, thereby providing a method for the establishment of the destroyed tax certificates, but each certificate must be made the subject of a separate petition, or all certificates relating to the same piece of land may be grouped and made the subject of a petition. In either case the number of suits would be very great and the expense enormous. You observe that Section 1534 requires the clerk to issue a notice upon the filing of such petition; to each notice should be attached a copy of the petition. The expense of the copy and notice to be made in each case and the cost of service would be an item of considerable moment, and when persons could not be served, notice would have to be published, which would be an item, in many cases, considerably in excess of the face value of the certificate. There would have to be a judgment in each case and the clerk's fees in the matter of the entry of the judgment would in many cases exceed the face value of the certificate. This and many other objections exist to the method you suggest, and which renders the plan from a financial standpoint entirely inexpedient.

I do not agree with you, that these certificates should be re-established "Regardless of the loss and gain entry

on the revenue ledger," because if the cost of re-establishing the certificates will be greater than the State's interest in their face value, with interest thereon, it would be better if the Legislature enacted a law declaring those certificates to be invalid, but to my mind such legislation is not necessary; it is entirely within the power of that body to provide, that in cases where certificates have been destroyed by fire and the records of the court consumed, that certified copies of the records in the Comptroller's office, placed on file in the clerk's office shall have the same force, validity and effect as the original tax certificates.

I will submit your letter to the Comptroller and together we will bring it to the attention of the Board of Commissioners of State Institutions, and your plan will receive due considerations.

The matter of the validity of the 1901 certificates may be deferred for the present. In the event your plan for the re-establishment of these services is adopted, it would then be time enough to investigate the question of the validity of the 1901 certificates.

Yours very truly,
W. H. ELLIS, Attorney General.

PROCEDURE IN CASES OF SUPPOSED INSANITY.

Tallahassee, Fla., Jan. 31, 1905.

Dear Sir:

Your letter of January 30th to hand .

Chapter 4357, Acts of 1895, is the act which "prescribes the mode of procedure in cases of supposed insanity, to provide for competent examination, to define the duties of County and Circuit Judges." Section 5 of the act, provides that "for the services herein required, compensation shall be allowed as follows: For each examination the physician two dollars and each of the other committeemen, one dollar, and when the proceedings are had before the County Judge, he shall receive two dollars for appointing examining committee, examining their report, making order, and for such other service as may be required, and the sheriff shall receive such compensation as deemed reasonable by the County Commissioners, but

not to exceed that allowed for service of summons Ad Res." The section further provides that, "All accounts accruing in pursuance of this act shall be approved and paid by order of the County Commissioners out of the general revenue fund of the county where such insane person resides."

Chapter 5264, of the Acts of 1903, amends Section 2, of the former act, and it requires the examining committee within a reasonable time after notice of their appointment to "secure the presence of the supposed insane person." There is no method provided for securing his presence, but Section 4 of the Act requires the County Judge or Judge of the Circuit Court, upon receiving the report of the examining committee, when satisfied from the report that the person examined is insane within the meaning of the act to adjudge and decree and shall make his order that the sheriff of any county from which the report is submitted, shall at once deliver the person so adjudged to the superintendent of the Florida Asylum for the Insane for care, maintenance and treatment.

The custom prevails that notice of the adjudication of insanity shall be sent to the superintendent, who sends an agent for the patient.

The act fixes your compensation, which is within the discretion of the Board of County Commissioners, limited by the fee allowed for the service of summons Ad. Res.

Yours very truly,

W. H. ELLIS, Attorney General.

PUBLICATION OF ACTS OF LEGISLATURE.

Tallahassee, Fla., Feb. 22, 1905.

Dear Sir:

Your letter of the 11th to hand; it reached my office during my absence, hence the delay in replying.

Chapter 5199, laws of 1903, provides "that Secretary of State shall furnish to the clerks of the Boards of County Commissioners of the several counties of the State, certified copies of the acts of the Legislature which are of a general and permanent nature" and "that the Boards of County Commissioners of the several counties of the

State, at their first regular meeting after the receipt of the certified copies of the acts of the Legislature from the Secretary of State shall designate one daily or weekly newspaper which has been continuously published for a period of not less than one year in their respective counties, in which the acts as certified by the Secretary of State shall be published one time.'

You will observe, therefore, that the matter of selecting a newspaper in which the acts shall be published, rests with the Board of County Commissioners.

Yours very truly,

W. H. ELLIS, Attorney General.

ELECTIONS CONCERNING SALE OF INTOXICATING LIQUORS.

Tallahassee, Fla., Feb. 22, 1905.

Dear Sir:

Your favor of the 2nd instant addressed to Hon. H. Clay Crawford, Secretary of State, was delivered to me by that gentleman for reply.

Article 19, of the Constitution, provides that "The Board of County Commissioners of each county in the State not oftener than once in every two years, upon application of one-fourth of the registered voters of any county, shall call and provide for an election in the county in which application is made, to decide whether sale of intoxicating liquors, wines or beer shall be prohibited therein, the question to be determined by a majority vote of those voting at the election called under this section, which election shall be conducted in the manner prescribed by law for holding general elections."

The last clause of Section 16, of Chapter 4328, Acts of 1895, provides, "That the registration books shall be kept open to inspection of the County Commissioners and the public during the consideration of any application for permit to sell liquors, wines and beer."

Section 20, of the act provides that "the Supervisor of Registration shall not be authorized or required prior to any election to furnish copies of the registration books of his county, or to allow indiscriminate handling or examination thereof by any one, but he shall at all times al-

low any elector to examine as to the status of his own name upon the books of the election district to which such elector belongs." This clause does not prevent the Supervisor of Registration from furnishing you with a list of the registered voters of the county, if you desire such a list. I should think, however, that he has a right to charge such a sum as would be a reasonable compensation for making up such list. I gather from your letter, that the above constiutes the points upon which you desire information.

I will state that when the prohibitionists of this county desired an election to be held under the local option clause of the Constitution, they organized and employed an attorney to advise them; the election was held and no contest was instituted.

Yours truly,
W. H. ELLIS, Attorney General.

HOLDING TWO OFFICES AT SAME TIME.

Tallahassee, Fla., Feb. 25, 1905.

Dear Sir:

I am in receipt of your letter without date, in which you ask if Honorable J. A. J. Hathaway, County Judge of Holmes County, could act as Deputy Clerk, and if all work performed by him as such Deputy Clerk would be legal.

Section 15, of Article XVI, of the Constitution, provides, that, "No person holding or exercising the functions of any office under any foreign government, under the government of the United States, or under any other State, shall hold any office of honor or profit under the government of this State; and no person shall hold, or perform the functions of more than one office under the government of this State at the same time."

Section 1384, of the Revised Statutes, defines the powers and duties of Deputy Clerks; it provides that the Clerk may appoint a Deputy or Deputies, for whose acts he shall be liable, *and the said deputies shall have and exercise the same powers as the clerks themselves.*" In other words, the Deputy Clerk performs the functions, though he does not hold the office of the Clerk of the Court.

It has been held that the office of Deputy Sheriff and Justice of the Peace are incompatible and the acceptance of the latter will vacate the former.

If Judge Hathaway was appointed Deputy Clerk, he would perform the functions of the office of Clerk, he would have that power and could exercise it under Section 1384 of the Revised Statutes; to do that while acting as County Judge, would be performing the functions of more than one office at the same time under the government of this State. It occurs to me, therefore, that the County Judge under the section of the Constitution referred to, is precluded from occupying the office of Deputy Clerk, while he retains the position of County Judge.

Yours truly,
W. H. ELLIS, Attorney General.

COUNTY FUNDS.

Tallahassee, Fla., February 28, 1905.

Dear Sir:

Your letter of the 14th was received at my office during my absence from town. The accumulation of business during my absence was more than I could immediately dispose of upon my return, hence the delay in replying to your letter of above date.

You wish to know if the County Commissioners have the authority to order a transfer of the money in one fund to another fund, and whether a resolution to that effect would justify the County Treasurer in making the transfer.

The Constitution provides, that the powers and duties of the County Commissioners and County Treasurers shall be prescribed by law.

The law requires the County Treasurer to keep the county fund; that no warrant shall be drawn upon any fund except that for which the said fund was raised; that the warrant shall state specially the fund upon which the warrant is drawn, and no County Treasurer shall pay any warrant that is not drawn in conformity with the terms of Section 585 of the Revised Statutes.

The law authorizes a tax to be levied for each fund. This includes the Fine and Forfeiture Fund, and requires the Treasurer to pay the money in such fund only for

criminal expenses, fees and costs, where the crime was committed in the county, and the fees and costs are a legal claim against the county.

Provision is made by law for registering warrants presented when there is no money in the fund with which to pay them.

I know of no statute which authorizes the Board of County Commissioners to transfer the money in one fund to a different fund. The purpose of the law, as I gather it, is to keep the moneys of the county raised for different purposes separately. Statements are required to be made of the county finances, the object being to keep the people of the county advised as to the sums of money that are raised and expended for any purpose.

The borrowing of money by one fund from another fund is a mere fiction of bookkeeping.

The Treasurer is not authorized to pay money out of any fund except upon a warrant drawn in accordance with law.

You understand that the Attorney General is not the legal advisor of the county officers, and consequently the views above expressed cannot be regarded as official.

Yours truly,
W. H. ELLIS, Attorney General.

FEES, SHERIFFS.

Tallahassee, Fla., March 4, 1905.

Dear Sir:

I am in receipt of your letter of the 1st inclosing letter from Mr. R. P. Reese, relating to a matter upon which the Board of County Commissioners requires my opinion.

I understand the facts to be as follows:

The Sheriff, without warrant, entered a building where he had cause to suspect that intoxicating liquors were sold contrary to law and arrested a person whom he believed was engaged in its illegal sale. The person was taken before a magistrate, I presume, and a bond fixed at $250.00; the letter states, "for his appearance for trial," I presume the writer meant that the bond was for his appearance either before the committing magistrate or the Criminal Court of Record; that the person failed to appear, his bond was estreated and collected; that there

was no trial, conviction and sentence. The County Commissioners desire my opinion upon the question; whether the Sheriff is entitled to the sum of $100.00 for his services.

Section 1305 of the Revised Statutes, provides that "No fees shall be charged in any case, or for any official service performed or claimed to be performed by any official within the State, unless fees be expressly authorized and their amount be specified by law."

Under Section 57, Chapter 5106, the fee of $100.00 for the official service is expressly authorized; the section, however, provides that the money shall be paid out of the fine so collected.

Aside from the question, whether the clause of the section making provision for the payment of the above sum for such service is valid, it is clear that the source from which the money is derived for such payment is limited by the act to the fine collected.

A fine is a pecuniary punishment for an offense, imposed by the judgment of a court. In this case there was no trial of the alleged offender, nor judgment, nor fine imposed.

The clause under which the fee is claimed relates to the compensation of a public officer, and the rule undoubtedly is: That such acts must be strictly construed, public officers being entitled only to what is clearly given by law.

It is my opinion, therefore, that the Sheriff may not be paid $100.00 for the services rendered until the fine is collected.

You understand, of course, that the law does not require the Attorney General to furnish opinions to county officers, consequently the views above expressed cannot be regarded as official.

Yours very truly,
W. H. ELLIS, Attorney General.

SPECIAL TAX SCHOOL DISTRICTS.

Tallahassee, Fla., March 24, 1905.

Dear Sir:

Your letter of the 10th was received in due course of mail, but owing to the immense amount of correspon-

dence on my desk and other work incident to this office, I have been unable to reply to your communication as promptly as I desired.

I will state that in the first place, I presume that the sub-school district to which you refer was established under Chapter 4678 of the Acts of 1899. Section 3 of that act, provides that "Special school districts, created under this act, shall continue until dis-established or changed by like proceedings as those by which they were created."

It is very clear, therefore, that a new district cannot be created by including part of the old district, unless the old district is first dis-established, or a petition be presented to create two districts to consist of the old district or a part thereof and other territory.

Yours very truly,
W. H. ELLIS, Attorney General.

Tallahassee, Fla., March 29, 1905.

Gentlemen:

I am in receipt of your communication of recent date; I must ask your pardon for the delay in replying thereto.

I have received several communications concerning the establishment of the proposed Zolfo School District; one from Hon. Jos. H. Brown, which I replied to a few days ago.

To state the case, as I understand it: The Popash School District was established under Chapter 4678, Acts of 1899, and the Wauchula School District was established under the same act. Now a new district is proposed, to consist of a large part of the Popash District, a part of the Wauchula District and new territory; that is to say, territory not included in any other school district.

Section 3 of Chapter 4678, provides, among other things, as follows: "Special tax school districts created under this act, shall continue until dis-established or changed by like proceedings as those by which they were created.

Section 7 of the act provides: "That all qualified voters residing within the territory sought to be made a special tax school district, that pay a tax on real or personal property shall be entitled to vote in such election, and a majority of the votes cast shall determine any matter voted upon, pertaining to a special tax school district."

Section 2 of the act provides: "That the Board of Public Instruction shall order an election to be held in any subdivision of the county, at such time and place as said board may direct whenever one-fourth of the qualified electors, that pay a tax on real and personal property and are resident of such subdivision of the county, shall petition for such election, to determine whether such subdivision of the county shall become a special tax school district, for the purpose of levying and collecting a district school tax for the exclusive use of the public free schools within the district."

As referred to above, the law provides, that when a school district is created under the provisions of the act mentioned, it shall continue until dis-established or changed by like proceedings as those by which it was created.

In the creation of the proposed Zolfo district, by the means which the newspaper clipping, inclosed in your letter indicates; the Popash District, as it now exists, and as it was originally created, would be changed if not entirely dis-established, and yet, by means which you propose "all the qualified voters" residing within the Popash District would not participate in the election to establish the proposed Zolfo District, therefore, the Popash District might be changed by proceedings different from those by which it was established; different in the sense, that all the voters who were qualified under the law to participate in the election in which the Popash District was established, would not be qualified to participate in the election, in which the Zolfo District is proposed to be established. Again, the boundaries of the Popash District would be changed by the vote of persons residing outside of the district and over the unanimous protest of those residing in the district; this condition of things the statute did not contemplate. I am of the opinion, therefore, that the proposed method by which you seek to change the Popash District is not in accordance with the Statute. Yours very truly,

W. H. ELLIS, Attorney General.

BLANK BOOKS COUNTY OFFICERS.

Tallahassee, Fla., March 31, 1905.

Dear Sir:

In reply to your letter of the 21st inst., I beg to say that Section 490 of the Revised Statutes, provides, in part, that "The books of record, blank books and stationery of the various counties in this State shall be purchased by the County Commissioners from parties manufacturing the same in this State; Provided, That they can be bought on as fair and reasonable terms as elsewhere, taking quality into consideration."

The above section directs the County Commissioners to supply the books of record, blank books, etc., but does not direct the purchase of a seal.

Section 1601, Revised Statutes provides that each justice of the peace shall "provide himself" with a seal.

Yours truly,

W. H. ELLIS, Attorney General.

COUNTY SURVEYOR.

Tallahassee, Fla., May 10, 1905.

Dear Sir:

I am in receipt of your letter of recent date.

You will find your duties as County Surveyor outlined by Section 646 of the Revised Statutes. Section 647 prescribes the oath to be administered. Section 648 provides for deputies; they may be sworn in by notaries public. Section 649 provides for fees. As you are responsible for the acts of your deputies, the matter of placing them under bond is a matter for your discretion. There are no forms of oath to be administered to deputies. The oath may be verbal. There are no rules prescribed by the statutes for the guidance of the Surveyor in his work; he is left to his own judgment and skill. Honesty of purpose and skill in handling an instrument are the chief qualifications, in my judgment.

Yours very truly,

W. H. ELLIS, Attorney General.

COUNTY COMMISSIONERS AS BOARD OF EQUALIZATION.

Tallahassee, Fla., June 3, 1905.

Dear Sir:

I am in receipt of your communication of recent date asking if the County Commissioners have a right to raise or lower the valuation of personal property on the assessment roll as the same has been made by the Tax Assessor.

Section 20, of Chapter 4322, Laws of 1895, requires the Assessor to estimate the value of all personal property liable to taxation at its true cash value according to his best judgment and information. The law also requires the assessment of personal property to be made separate from the assessment of real estate.

Section 28 of the act constitutes the Board of County Commissioners a Board of Equalization so far as the assessment of real estate is concerned. Their powers in this regard are confined to the valuation placed on real estate.

The power of the Board is not defined by the act as to the matter of lowering or raising the valuation placed on personal property as the same appears in the roll delivered to it by the Assessor. The act provides that it shall be unlawful for the County Commissioners to lower the assessment of any personal property given in by the owner or assessed by the Assessor, which shall not have been specified under oath. This is a negative provision, and it does not imply that the Board has the power to raise or lower an assessment of personal property given in by the owner or assessed by the Assessor which had been given in under oath.

I think the purpose of the act is to require the Assessor to assess personal property at its true cash value. He has the power to raise the value of personal property given in by the owner and specified under oath, and his failure to comply with the statute in this regard is cause for removal from office by the Governor.

Yours very truly,

W. H. ELLIS, Attorney General.

MILLAGE FOR COUNTY SCHOOL PURPOSES.

Tallahassee, Fla., June 5, 1905

Dear Sir:

Your communication of the 12th ultimo, addressed to Hon. W. O. McCullom was delivered to me by that gentleman for reply.

I will state that the constitutional amendment, voted upon at the last election, and which was adopted at that election, went into effect immediately, that it is self-operating and requires no further legislation to put it into force. The County Commissioners, therefore, may levy seven mills for county school purposes if needed.

County Commissioners may issue bonds for public works, but only on the conditions prescribed by statute. Chapter 4711 provides that County Commissioners may issue bonds for the construction of paved and macadamized or other hard-surfaced highway * * * but does not authorize the issuing of county bonds for the purpose of building bridges specially. I do not know of any statute which authorizes the County Commissioners to issue bonds for the purpose of building bridges particularly.

Section 13, Chapter 4338, Acts of 1895, prescribes the method which shall be followed when bridges are to be built.

Yours very truly,

W. H. ELLIS, Attorney General.

LICENSE.

Tallahassee, Fla., June 6, 1905.

Dear Sir:

The License Act of 1903 provides that license shall be payable on or before the first day of October of each year, and no license shall be issued for any fractional portion of a year; except that any license not otherwise specified in this act may be issued after the first day of April to expire October 1st, upon payment of one-half of the amount fixed, as the price of such license for one year.

Section 17, which provides for the merchants' license,

does not provide that there shall be no fractional license. Therefore, it follows that fractional licenses may be issued to merchants after April 1st.

Yours very truly,
W. H. ELLIS, Attorney General.

QUALIFIED ELECTORS.

Tallahassee, Fla., June 6, 1905.

Dear Sir:

Your letter of the 31st ultimo, has been received.

Section 21 of the Election Law of 1895, provides that "the Supervisor of Registration shall note on the Registration books, which he shall furnish to the inspectors of the different election districts, the names of all persons registered therein who shall have paid, on or before the second Saturday of the month immediately preceding the day of the election, their poll or capitation taxes for two years next preceding the year in which such election is held, as shown by the list furnished to the Supervisor by the Tax Collector, and only such persons shall be deemed qualified voters, authorized to vote at any general, special or municipal election."

It appears to me that to be qualified to vote at a special election to be held in 1905, it becomes necessary to pay poll taxes for the years 1904 and 1903.

Yours very truly,
W. H. ELLIS, Attorney General.

HABEAS CORPUS CONDITIONAL PARDON.

Tallahassee, Fla., June 27, 1905.

Dear Sir:

In re the Edward Alvarez case I have to say, that after some investigation of the questions presented in the habeas corpus proceedings, I have concluded that the course which should have been followed in the matter of the arrest of Alvarez for a violation of the conditions of his pardon was not followed. There is an absence of any statute in this State directing how the violation of a

condition upon which any pardon may have been issued, may be ascertained. It also occurs to me that when a person has accepted a pardon upon the conditions named therein, he acquires a right to remain without the custody of the prison officials so long as he observes the conditions specified in the pardon granted, and that before he can be deprived of his liberty upon the charge that he has violated any or all of those conditions, he has a right to be heard; at least, such seems to be the common law upon the subject. At the common law, whenever a person that had been pardoned violated the conditions of his pardon, a complaint setting up the fact of such violation was filed in the court in which he was tried, or some court having high criminal jurisdiction; upon such complaint being filed a warrant was issued for his arrest; he was taken into custody upon that warrant and the court issued an order directed to him to show cause, if any he could, why execution should not issue against him upon the original sentence. The first question presented was one of indentity, if the court was in doubt, a jury was empaneled to try that question. After the question of identity was determined, the other questions were determined by the court upon affidavit, the prisoner not having the right to have the questions determined by a jury of his peers.

If the above is the law in this State, it is very necessary that the complaint be filed and the warrant be issued in accordance with the procedure outlined above, so that Alvarez may be arrested upon that warrant in the event Judge Call discharges him upon the writ of habeas corpus.

At the hearing upon the writ of habeas corpus the following theory might be urged in behalf of the State: That the Board of Pardons being vested with the power to grant pardons upon such conditions and with such limitations and restrictions as they may deem proper. have the implied power to revoke any pardon granted without a hearing being granted to the person in whose favor the pardon was issued, because the latter being at liberty by virtue solely of an act of grace has no right for adjudication by a court of law. If that theory is not held by Judge Call, Alvarez should not be permitted to escape. I therefore suggest that you proceed to Starke, file the petition in the nature of a complaint in your name as State Attorney, or my name as Attorney General, obtain the warrant, whose phraseology should agree with that of the petition

filed. Have the warrant placed in the hands of the Sheriff so that Alvarez may be arrested if the Judge discharges him at the hearing upon the writ of habeas corpus.

I herewith inclose a copy of some excerpts from the minutes of the Board of Pardons, relating to the Alvarez case. I will forward a memorandum of some authorities.

I have consulted with Governor Broward regarding this course, and the same meets with his approval.

Yours very truly,

W. H. ELLIS, Attorney General.

CORONERS' INQUEST.

Tallahassee, Fla., July 14, 1905.

Dear Sir:

I am in receipt of your favor of the 15th ultimo, in which you state that the Board of County Commissioners requested you to seek advice from me relative to Coroner's fees; that the Board desires to know if a coroner is entitled to any fee when no inquest is held; or, in other words, for simply viewing a dead body.

In reply, I wish to state that Section 3010 of the Revised Statutes provides as follows: "Inquest not held unless death caused by crime or negligence—unless there shall appear, to the satisfaction of the coroner, after considering the circumstances, attending the cause of death, that he has good reason to believe that the death was caused by the criminal act and negligence of another, no inquest shall be held, nor shall any compensation be allowed for a jury, and if in the opinion of the coroner an inquest ought to be held, he shall include the grounds of that opinion in the order for the jury." It appears from that section that no inquest shall be held by the coroner unless he has good reason to believe that the death of the person was caused by the criminal act and negligence of another. The compensation which a coroner receives is fixed by statute.

Section 3024, as amended by Chapter 4968 of the Acts of 1901, provides as follows: 'The coroner's fees shall be as follows: Summoning jury, taking inquisition on dead body and making return thereof, three dollars, and five cents for each mile to and from the place of inquest

by the nearest practical route, to be paid by the county. For any other official service, he shall receive same fees as sheriffs."

It appears, therefore, that there must have been an inquisition on the dead body and return thereof, the summoning of a jury and such other steps as the law requires to be taken in such cases before the coroner is entitled to his fee of three dollars.

I know of no such statute which provides for the payment of a fee to a coroner for viewing a dead body.

I wish to say that under the circumstances set out in your letter the coroner would not be entitled to a fee of three dollars.

Yours very truly,
W. H. ELLIS, Attorney General.

FERTILIZERS.

Tallahassee, Fla., July 22, 1905.

Dear Sir:

Your letter of the 20th has been received.

I understand your statement to be as follows: You are a merchant and, as such, purchased from a fertilizer company in this State a quantity of fertilizer; that you acted as agent for such company; that every package of fertilizer handled by you for the company had attached and plainly stamped thereon the number of pounds of fertilizer in the package, the trade mark under which the fertilizer was sold, the name of the manufacturer and the chemical analysis, stating the percentage of ammonia, and the source from which the same was derived, the percentage of potash soluble in water, the percentage of available phosphoric acid and the percentage of insoluble phosphoric acid, the percentage of moisture contained therein; also the maximum percentage of chlorine therein, and all ingredients from which it is compounded; also the stamp showing the payment of the license fee provided for by law. All this was necessary to comply with the law on the subject, and I presume you would not act as agent of a fertilizer company who refused or failed to have their packages of ertilizer marked as the statute required.

I also understand from your letter that the representations made by the company upon their packages of fertilizer, which you purchased and sold as their agent were false.

Section 4 of Chapter 4983, provides for the punishment of any manufacturer or dealer who shall misrepresent the proportion of ammonia and the source thereof, phosphoric acid and potash or other ingredients contained in such fertilizer, by a fine of five hundred dollars for the first offence and one thousand dollars for each subsequent offence.

Section 10 of the act provides that "Any person purchasing any fertilizer from any manufacturer or vendor who shall, upon an analysis by the State Chemist, discover that he has been defrauded, by reason of adulteration or deficiencies of constitutent elements, either in quality or quantity, in the fertilizing materials so purchased, shall recover in any action he may institute, upon proof of the fact, twice the amount paid to or demanded by the manufacturer or vendor for the fertilizer or fertilizing material so purchased. * * *"

If you desire to institute suit you will, of course have to employ your own counsel. The law does not provide for the institution of such suits by the Attorney General in behalf of individuals.

Hoping that I have given you the information desired, I am, Yours very truly,

W. H. ELLIS, Attorney General.

FEES IN CASES OF EXAMINATIONS FOR SUPPOSED INSANITY.

Tallahassee, Fla., August 1, 1905.

Dear Sir:

I am in receipt of your letter of July 22nd, inclosing bill against Sumter County for $20.00 for fees for services rendered in the matter of the examination of a person for insanity and for the use of a team to Sumterville. The case, as you state it, was certainly one in which you were subjected to no little amount of inconvenience and expense. The bill which you have made out against the county is for a visit and preliminary examination, $8.00;

final examination, $8.00, and examination for insanity, $2.00, making total of $18.00 for examination of patient, the remaining item of $2.00 being for the use of a team to Sumterville.

The County Commissioners have no authority to order money to be paid out of the county funds except in such cases wherein the expense incurred is provided by law to be paid by the county.

Under Section 5 of Chapter 4357, Acts of 1895, the physician, who, under that act may have been appointed as a member of the committee to make an examination of the supposed insane person is allowed for such examination the sum of $2.00. The two items appearing in your bill, therefore, as follows: Preliminary examination, $8.00, and final examination, $8.00, may not be ordered paid by the Board of County Commissioners under the statute referred to. The same act provides that the Sheriff shall receive such compensation as is deemed reasonable by the County Commissioners, but not to exceed that allowed for service of summons ad respondenum. If the service in that case was an accommodation to the Sheriff, he should pay the expenses and afterward present his account to the board.

Yours very truly,
W. H. ELLIS, Attorney General.

EXTRADITION.

Tallahassee, Fla., August 29, 1905.

Dear Sir:

Your letter of recent date to hand. I have just returned to the city after an absence of two weeks, hence delay in replying to your letter.

The statute does not contemplate that a warrant issued in another State shall be made effective in this State by mere indorsement by an officer. If the fugitive from the justice of another State should flee to the State of Florida, a requisition should be made for him by the Governor of the State from which he fled upon the Governor of this State, who, in honoring such requisition, would order the arrest of the fugutive and his delivery to the agent of the State from which he came. An affidavit may be made by

any one charging him with being a fugitive from justice, and the officer before whom the affidavit is made may issue his warrant for the fugitive, and he may be detained in custody until a requisition has been made and honored.

The section quoted in your letter covers the subject referred to.

Yours very truly,

W. H. ELLIS, Attorney General.

REGISTRATION BOOKS.

Tallahassee, Fla., August 31, 1905.

Dear Sir:

I am in receipt of your letter of the 28th, and in reply will say, that the statute does not provide for the opening of the registration books other than in a general election year.

Section 10 of Chapter 4328, as amended by Chapter 4537 of Acts of 1897, provides for the opening of the registration books in each year in which there is any general election, and no persons shall be allowed to register at any other time than during the period provided in that section for opening of the registration books for registering of electors.

Section 163 of the Revised Statutes provides that any persons shall be allowed to register at the office of the Supervisor of Registration at any time after the ordering and ten days before the holding of any special election held in any county. But the entire subject of the registration of voters and the holding of general and special elections was revised by the Act of 1895, and that clause was omitted.

Yours very truly,

W. H. ELLIS, Attorney General.

FISH AND GAME WARDEN.

Tallahassee, Fla., September 5, 1905.

Dear Sir:

Your letters of the 11th and 17th ultimo, have been received. They were received at my office during my absence

from town; since my return I have been unable, on account of the accumulated business, to give your valued communications immediate attention, and I have not the time now at my disposal to give your letters the consideration which they merit.

I would like for you to understand that in giving you an opinion upon the subject matter of your letters, that it is entirely unofficial, because the Attorney General is not the legal advisor of Boards of County Commissioners, nor of any county official.

The duties of Fish and Game Warden exist by virtue of Chapter 4782 of the Laws of 1899, Section 1 of which act provides, that the Board of County Commissioners shall recommend to the Governor the name of some suitable person resident of the particular county for appointment as such warden for such county when a petition, signed by fifty registered voters and taxpayers shall be presented to the Board of County Commissioners, praying that a Fish and Game Warden be appointed for such county. Upon receipt of such recommendation, the Governor is required to appoint the person so recommended, who shall hold his office for two years. The duties and functions of the Fish and Game Warden are prescribed in other statutes, but nowhere is the Governor authorized to appoint a Fish and Game Warden for two or more counties.

It seems to me that two Fish and Game Wardens, one for St. Lucie and one for Dade County might be appointed, and such persons could be selected by the County Commissioners of each county acting together in the matter so as to secure co-operation.

Yours very truly,

W. H. ELLIS.

ELECTIONS CONCERNING SALE OF LIQUORS.

Tallahassee, Fla., September 5, 1905.

Dear Sir:

Your communication of the 16th ultimo, reached my office during my absence from town, and since my return I have not had the time at my disposal to answer your letter earlier.

I beg to refer you to Section 861 of the Revised Statutes, which provides, under the title of "Local Elec-

tions Concerning the Sale of Liquors," that the County Commissioners shal canvass the returns and declare the result, and cause the same to be recorded as provided in the general law concerning elections, as far as applicable. In the case of Robt. J. Barton v. State of Florida, 43 Fla., page 477, the Supreme Court held that the Board of County Commissioners is the body authorized to canvass the vote and declare the result of elections held to determine whether the sale of spirituous, vinous and malt liquors shall be prohibited in any county; and such Board of County Commissioners constitute "the county canvassing board."

Yours very truly,

W. H. ELLIS.

REWARDS.

Tallahassee, Fla., September 5, 1905.

Gentlemen:

I am in receipt of your telegram of this date asking, "If County Commissioners have the authority to offer a reward for the arrest and conviction of criminals; wire answer." I replied by telegram as follows: "I think not." I do not believe that such use of the public funds by the Board of County Commissioners is authorized. The powers of County Commissioners are defined by statute; they have only such powers as are granted by statute, and I do not regard the prosecution of criminals as a county matter, notwithstanding the cost of criminal prosecutions must be paid by the county. I fail to find in the statute any clause which would authorize the County Commissioners to use funds of the county for the purposes named.

Yours very truly,

W. H. ELLIS.

COUNTY SITES.

Tallahassee, Fla., October 11, 1905.

Dear Sir:

Your letter of the 10th was received by me yesterday afternoon. In compliance with your wishes, I hasten to give you my views upon the proposition submitted.

In the first place, I would like for you to understand that my opinion is not in any sense official, and is, therefore binding upon no one. The Attorney General is not the legal adviser of county officials, consequently his views concerning the powers and duties of such officials is not binding upon them.

Sections 622 to 625, inclusive, of the Revised Statutes of Florida, constitute the law of this State upon the subject of changing county sites. The change of a county site depends upon the result of an election ordered by the County Commissioners upon a petition signed by one-third of the registered voters praying for a change of location of such county site. The election held under the provisions of the above named sections is conducted according to the manner prescribed by law for holding general elections.

The place receiving a majority of the number of votes cast at the election shall be the county site for ten years.

The Supreme Court of this State has held that under the statute to which I have referred, the order which the County Commissioners make is "for an election locating the county site," and that the several voters of the county have the right to vote for any place in the county they may respectively deem the best place for the county site.

It seems to follow, therefore, that there may be as many candidates for the county site as there are preferences among the voters. In the election, those who prefer the present site vote for that place, just as those who prefer a change vote for the place of their choice. It would seem to follow that if no place receives a majority of the votes cast, the old site remains as the county site. Another election may be ordered as soon as practicable, but it must be upon a new petition; the old petition has performed its service.

In the second election the voters have the same privilege as they had in the first as to voting for their choice of places. It therefore follows, that if no place receives a majority of the votes cast, the election does not thereby locate the site at the present location for ten years.

A question arises which may be of some interest. Section 624 provides that "All elections held under the provision of this law shal be conducted in the usual manner prescribed by law for holding general elections in this State."

Section 10, of Chapter 4537, amending Section 30, of Chapter 4328, prescribes the manner of providing for the ballots, and what shall be printed thereon. Where a person has not been nominated by a party or faction he may have his name printed thereon upon the petition of twenty-five electors, if he is a candidate for a county office. It may be that such course will have to be followed in the election called in Washington County to locate a county site, to have the names of the candidates printed upon the ballots. Yours very truly,

W. H. ELLIS.

REGISTRATION BOOKS.

Tallahassee, Fla., Oct. 14, 1905.

Dear Sir:

I am in receipt of your letter of the 12th, and in reply will say that I have just answered a communication from Governor Broward in which he requested my opinion upon the subjects of two letters written by you to him of recent date. One of the letters covering the subject referred to in your letter of the 12th to me, and the other relating to the question of payment by the County Commissioners of Coroner's fees in certain cases.

In regard to the subject of your letter of the 12th, I will say that my reply to the Governor upon the same subject was as follows:

"As to the inquiry propounded by Mr. Long, relating to the opening of the registration books to permit persons to register, that they may vote in a special election and the duty of the County Commissioners as to the revision of the registration books prior to a special election. I beg to say, that I am of the opinion that the books may not be opened for registration at any other time than that designated in Section 10, Chapter 4328, Acts of 1895, as amended by Chapter 4537, Acts of 1897, and that it is the duty of the County Commissioners under Chapter 5250, Acts of 1903, to hold a meeting at least fifteen days prior to a special election and revise the registration list."

I wish to say, that it is no part of the duties of the Attorney General to advise county officials, consequently, the views expressed by me upon this question are not in any sense official.

Yours very truly,

W. H. ELLIS.

COSTS IN CERTAIN CASES.

Tallahassee, Fla., Oct. 21, 1905.

Dear Sir:

I am in reecipt of your letter of the 19th, asking me if the County Commissioners have the right to refuse to pay County Judges and Sheriff's costs in committal trials where parties are bound over for their appearance at Circuit Court. Or if they have the right to refuse to pay such costs until the case is finally disposed of.

In reply I beg to say that Section 7 of Chapter 4323 Laws of 1895 provides that, "If the defendant is not convicted, or the prosecution is abated by the death of the defendant, or if the costs are imposed on the defendant and execution against him is returned no property found, or if a nolle-prosse be entered, the fees of the officers shall be paid by the county; Provided, That when a committing magistrate holds to bail or commits a person to answer a criminal charge and an information is not filed nor an indictment found against such person, the costs and fees of such committing trial shall not be paid by the county, except the costs of executing the warrants as provided in Chapter 4123, Laws of Florida."

Chapter 4123 of the Acts of 1893 provides, "That whenever a committing magistrate holds to bail or commits a person to answer to a criminal charge in a County Court, Criminal Court of Record, or Circuit Court, and an information is not filed nor an indictment found against such person, the costs of such committing trial shall not be paid by the State except the costs of executing the warrants."

You will observe that under the Act of 1893 when costs in criminal cases were paid by the State, it was the rule that the costs of committing magistrates should not be paid in cases where no indictment was found and that the Sheriff's fees should not be paid except those incurred for executing the warrant.

In 1895, when the fine and forfeiture fund was established and the Constitutional Amendment had gone into effect requiring the counties to pay the costs in criminal cases, Section 7 of Chapter 4323 was inserted to cover the same provisions contained in Chapter 4123.

I think that the County Commissioners have the right

to refuse to pay such costs until an indictment is found or an information is filed.

Yours very truly,

W. H. ELLIS.

PENSIONS.

Tallahassee, Fla., October 28, 1905.

Dear Sir:

In reply to yours of the 23rd, I beg to say, that under the Statutes of the State of Florida, any person who enlisted and served in the military or naval service of the Confederate States or this State during the war between the States of the United States and did not desert the Confederate or State service and who was a bona fide citizen of this State, on January 1, 1885, who has since continued to be a citizen of this State, who lost a limb or limbs, an eye or eyes, or who is permanently disabled by reason of wounds or disease to gain a livelihood by manual labor, or who being more than sixty-five years old is by reason of age incapable of providing a living for himself, is entitled to a pension under the laws of Florida; provided he does not own property to the value of eight hundred dollars, that his wife does not own property to that amount, that he has no income from any source sufficient for support, or that he is not receiving a pension from the United States or any other State.

The evidence by which an applicant must prove the statements made in his application is outlined in the 6th paragraph of Section 1 of Chapter 4894, Acts of 1901.

The Acts of 1903 provides that the widow of any deceased soldier or sailor who enlisted or served in the military or naval service of the Confederate States or this State during the war between the States of the United States, and did not desert the Confederate or State service is entitled to receive a pension, provided such widow was lawfully married to such soldier or sailor prior to January 1st, 1885 ,and provided that she was a resident of the State of Florida on January 1st, 1890, and has since continuously resided in this State, and, Provided further that she does not own real or personal property to the value of eight hundred dollars.

The provisions of the Act do not apply to any widow after her marriage.

Yours very truly,

W. H. ELLIS.

EX-CONFEDERATE SOLDIERS, EXEMPTION FROM LICENSE TO PEDDLE.

Tallahassee, Fla., November 2, 1905.

Dear Sir:

I am in receipt of your letter of the 28th ultimo, and in reply beg to say, that Chapter 4667 of the Acts of 1899 provides for the exemption of ex-Confederate soldiers from the payment of a license tax to peddle. Section 54 of Chapter 5106 Laws of 1903, provides that "all cripples or other parties physically incapable of manual labor shall be allowed to peddle without paying a license, using only their own capital, in the counties in which they live; also to drive a public hack or dray without paying a State, county or city license; provided the hack or dray belongs to himself. Provided, that this exemption shall not apply to the sale of spirituous, vinous or malt liquors."

Hoping the above is satisfactory, I am

Yours very truly,

W. H. ELLIS.

HUNTING LICENSE REQUIRED OF NON-CITIZENS.

Powers of Game Wardens.

Tallahassee, Fla., November 11, 1906.

Dear Sir:

I am in receipt of your letter of the 8th. In reply I beg to say that I can not attempt to go thoroughly into the many questions propounded in your letter, for the reason that the duties of this office are so numerous that I have not the time to devote to an investigation of the many questions propounded. If you are willing, however, to accept a "horseback opinion," I will do the best I can.

In the first place, Section 6 of Chapter 5251, Laws of

1903, which provides that all non-residents of the State should before hunting for the purpose of killing any wild game in Florida pay a tax of ten dollars to the Clerk, who should, upon the payment of such sum, issue to him a permit to hunt in the county in which application was made, was amended by Chapter 5427 of the laws of 1905, so as to require all persons who are not citizens to pay the tax; the Legislature thereby making a distinction between non-residents and "non-citizens."

Citizenship, I think, depends not altogether upon a person's movements, but upon the intention with which those movements are made; for instance, if the gentlemen referred to by you came from another State into the State of Florida, with the intention of abandoning his citizenship in the State from which he came and transferring it to the State of Florida, and is now residing in this State, with the bona fide intention of becoming a citizen of this State, I should say that he is a citizen of Florida, and therefore, not liable to the tax imposed by Chapter 5427.

I am aware of no act which prevents the killing of foxes and wildcats.

A man who merely accompanies a party as a spectator and who does not assist in the hunting and killing of game could not be required to pay the license contemplated by Chapter 5427, if he was a "non-citizen" of the State

I am not prepared to give an opinion upon the constitutionality of the game law.

Under Section 4 of Chapter 5435, Acts of 1905, Game Wardens and deputies have power to arrest and take before a magistrate, and subject to trial, according to law, any person violating any of the laws of the State for the protection and preservation of fish and game. The prudence with which he exercises that power is a matter for his discretion. Yours very truly,

W. H. ELLIS.

GRAND JURY, WITNESSES.

Tallahassee, Fla., November 15, 1905.

Dear Sir:

I am aware of no statute which provides for the payment of physicians who may be called as professional or expert witnesses in any cause, nor am I aware of any statute which authorizes a grand jury to require a physician to make an examination of any patient.

The statutes provide for the payment by the State for witnesses before the grand jury; all other expenses incurred in criminal proceedings, except the payment of jurors and witnesses before the grand jury should be paid by the counties. Yours very truly,

W. H. ELLIS.

SELLING INTOXICATING LIQUOR WITHOUT A LICENSE.

Tallahassee, Fla., November 27, 1905.

Dear Sir:

I am in receipt of your letter of the 22d, asking my views upon the claim of an officer, who made an arrest of a person charged with selling whiskey on Sunday, for the one hundred dollars provided by the act of 1903, to be paid to an officer making an arrest of a person who might be convicted of selling whiskey without a license.

In view of a decision of the Supreme Court contained in the 38 Southern Reporter on page 706, in the case of Schiller vs. State, I am inclined to the opinion that the officer is entitled to the reward provided by Section 57 of Chapter 5106, Acts of 1903.

In the Schiller case it was held, that it was competent for the Legislature to attach a restriction or limitation to a license to sell liquors, and to provide that a violator of the restrictions and limitations should be deemed guilty of selling liquor without a license. In fact, it held that a person who is guilty of selling whiskey on Sunday is really guilty of selling whiskey without a license.

The fine is not less than two hundred and fifty nor more than one thousand dollars, and imprisonment in the county jail for not less than thirty days nor more than six months. Yours very truly,

W. H. ELLIS.

COSTS IN CERTAIN CASES.

Tallahassee, Fla., November 29, 1905.

Dear Sir:

I am in receipt of your letter of recent date, but have been so crowded with business for the past two or three weeks that I have been unable to give your letter the prompt attention which I would like to have given it.

The subject of your letter is one which has commanded a great deal of attention from the county officers of this State.

In my judgment, the County Commissioners in many cases go entirely too far in their construction of the act of 1895 and subsequent acts, in the matter of the exercise of the discretion which is undoubtedly given to them regarding the payment of costs in criminal prosecutions. It was the undoubted purpose of the Legislature to vest in the Board of County Commissioners a discretion as to the payment of costs in criminal prosecutions, but that discretion is limited by the terms of the act, which provides, that no charge shall be allowed in a frivolous case. In all other cases where the defendant is not convicted or the prosecution is abated by the death of the defendant or the costs are imposed on the defendant and execution against him is returned, no property found. or nolle pross is entered, the fees of the officers arising from criminal cases are required by law to be paid by the county. The officer is required to make out his account against the county in such form as the County Commissioners may require.

The act provides that the County Commissioners shall have the right to reject all or any portion of an account which is not a valid claim against the county and shall allow and pay the same only when it is just, correct and reasonable, no constructive mileage, or illegal or unnecessary item or charge in any frivolous case shall be allowed. This language, in my judgment, does not authorize the County Commissioners to reject any and all claims or accounts against the county, on the ground that the case in which the charges were made was a frivolous one. I regard any such claim against the county as a valid claim and not arising in a frivolous case; where an affidavit is made by a person before a Justice of the Peace charging another person with the commission of a crime under the

laws of this State, and that a substantial injury has been done to person or property, and upon the filing of such affidavit the Justice of the Peace has issued his warrant, the defendant has been arrested and the trial had; a case arising upon such state of facts can not be regarded as a frivolous one, and in my judgment, it is an abuse of discretion to say so.

There are many warrants issued by the Justices of the Peace, charging persons with no offense under the laws of this State. They recite in their warrants facts which often do not constitute an offense against the laws of the State, but notwithstanding the warrant is invalid, a trial is held and the party acquitted. Such a case, I think, the Legislature had in mind when it provided that a charge in a frivolous case should not be allowed.

I regret that I have not the time to go into a full discussion of this matter with you, but I have endeavored to give in the foregoing my views in a general way of the statute prescribing the powers and duties of the Board of County Commissioners in the matter of the payment of costs in criminal prosecutions.

Yours very truly,

W. H. ELLIS.

COUNTY TREASURER.

Tallahassee, Fla., December 9, 1905.

Dear Sir:

I am in receipt of your letter of the 6th, in which you ask "if the County Commissioners have the power to require the County Treasurer to keep the county money with any certain persons."

In reply I beg to say that in my opinion the County Commissioners have no such authority. The Treasurer is required by law to give bond for the faithful discharge of the duties devolving upon him as Treasurer; this office is an elective one, and he is responsible to his constituents for the faithful performance of his duties, just as the County Commissioners are responsible to their constituents for their faithful performance of their duties.

Yours very truly,

W. H. ELLIS.

RIPARIAN RIGHTS.

Tallahassee, Fla., December 22, 1905.

Dear Sir:

I am in receipt of your letter of the 18th. In reply beg to say that riparian rights are incident to the ownership of the banks of water courses, and it is necessary to the existence of a riparian right that the land should be in contact with the flow of the water course. I should say, therefore, that a deed conveying a tract of land which extended to a water course so that the land came in contact with the flow of the stream, that the riparian rights would be secured to the grantee, assuming that the title to the land was conveyed by the deed. It is true as a general proposition that the owner of lands abutting upon a stream, in the absence of an express reservation limiting him to the margin, owns to the center of the stream.

I could not advise you whether in the case referred to there should be any special mention of riparian rights, because there may be something in the history of the title which at some time limited or curtailed the rights as incident to the particular tract. Yours very truly,

W. H. ELLIS.

COST IN CERTAIN CASES.

Tallahassee, Fla., December 22, 1905.

Dear Sir:

I am in receipt of your letter of the 18th, stating a case and asking if the County Commissioners "Will or will not have to pay any of the cost either of the first or second trial." In reply I beg to say, that the question submitted to me is a very difficult one to answer, and places me, as you can understand, in a somewhat embarrassing position.

I cannot undertake to instruct the Board of County Commissioners as to the course they should follow in the particular case, because in the first place, the Attorney General is not the legal adviser of the county officials, and his opinion is not binding upon them; in the second place, the facts are not given fully enough in your letter

to enable me to arrive at even an approximately correct conclusion, and in the third place, the matter of determining whether a particular case was a frivolous case or not within the meaning of the act of 1895 and the amendments thereto, vesting in the Board of County Commissioners the power of refusing to order the payment of cost bills in frivolous cases, is a matter of discretion, and it is hard to advise the Board upon its duty when the course is largely discretionary with the Board.

In a general way, I should say, that whenever a Justice of the Peace issues a warrant charging another with a crime and before issuing that warrant he has acted in good faith, and honestly endeavored to satisfy himself as to the importance of the camplaint, the Board of County Commissioners should not treat the case as a frivolous one. It is true that a discretion exists with the Board of County Commissioners in this matter of determining whether a case is a frivolous one or not, but it should be remembered that a discretion also exists in, and is required to be exercised by County Judges and Justices of the Peace, in the matter of issuing warrants upon complaint made before them; so the discretion of the Board of County Commissioners should not be abused, nor should it be recklessly exercised to that point where it practically nullifies the discretion vested in the Justice of the Peace or County Judge in the matter of issuing warrants, and thereby defeat the administration of the criminal laws of the State.

Yours very truly,

W. H. ELLIS.

COSTS.

Tallahassee, Fla., December 22, 1905.

Dear Sir:

I am in receipt of your letter of the 15th, containing a statement of a case which was tried before you, and the information that the Board of County Commissioners refused to pay the costs which accrued in your court in that case. You ask if the County Commissioners should order the cost to be paid or not. In reply I beg to say, that you neglected to state whether you required Stults or Nickles or Turner or anyone else to make an affidavit that the hog in question was the property of Stults and Nickles, or either of them.

Under Chapter 4734, whoever alters or defaces any marks or brands on any animal not his own without the consent of the owner, with the intention to defraud, is guilty of a crime. Under the general statutes, a Justice of the Peace may issue warrants charging persons with the commission of crimes whenever an affidavit is made by a Constable or any other person, charging such other person or persons with the commission of a crime.

The Justice of the Peace is required to satisfy himself of the importance of the complaint, and that there is reasonable ground for issuing the warrant before he issues it. So in the case submitted by you, you should have required an affidavit from Mr. Stults, or Mr. Nickles, or Mr. Turner or some other person that the hog whose mark was alleged to have been altered by Ferrell was the property of either Stults, Nickles or Turner or some other person other than Ferrell, and the alteration of the mark was made by Ferrell without the consent of the owner. On the trial of the case, then, the State could have proven by the affiant that the hog was not the property of Ferrell, and that the latter altered the mark without the consent of the owner. If you issued the warrant against the Ferrells upon an affidavit which did not contain the allegations above mentioned, then I think the County Commissioners did right in refusing to order the cost paid, upon the ground that the case was frivolous, because the warrant had no foundation in law and charged the defendant with no offence, if it did not rest upon an allegation that the hog was not the property of the defendant and that the altering of the mark was made by him without the consent of the owner.

I herewith return your letter as you requested.

Yours very truly,

W. H. ELLIS.

SLOT MACHINES.

Tallahassee, Fla., Jan'y 5, 1906.

Dear Miss:

Your letter of the 3rd has been received.

It is almost impossible for me to say whether slot machines without any other description as to how they

are operated are gaming devices within the meaning of Section 2651 of the Revised Statutes of Florida.

In a case decided by the Supreme Court of Florida in the 39th volume on page 442 the court gave some definitions of the word gaming. In view of our statute and that decision of the Supreme Court, I would say that a slot machine into which a person drops a coin of any value with the expectation of receiving something in return therefor, yet with the chance of obtaining nothing at all in return for his coin, is a gaming device within the meaning of the statute.

Very respectfully,

W. H. ELLIS.

COUNTY COMMISSIONERS.

Tallahassee, Fla., Jan. 5, 1906.

Dear Sir:

I am in receipt of your letter of the 2nd. In reply beg to say, that Section 579 of the Revised Statutes requires the board of County Commissioners to make out, at their first regular sitting in every year, a full and complete statement of all moneys collected by county tax, or otherwise received for county purposes and the disbursement of the same, stating the name of each person to whom, and upon what account the same was paid, and the date of said payment. This language is so clear it seems to me that it requires no construction. The purpose of the statute is obvious. If I were in your place, pardon me for making the suggestion, I would call the attention of the board at its next session to the section to which reference was above made and abide their instruction. So far as the expense for the publication of that statement is concerned, the statute provides that it shall not exceed ten dollars.

Yours very truly,

W. H. ELLIS.

CERTIFIED PUBLIC ACCOUNTANT.

Dear Sir:

I am in receipt of a communication addressed by you to Honorable N. B. Broward, Governor of the State of Florida, in which you ask if a member of the State Board of Accountancy who was appointed under Section 2 of Chapter 5425, to be a member of such board, is by virtue of his appointment entitled to the title of "Certified Public Accountant." I beg to say, that I am of the opinion that such appointment does not in itself authorize the use of such title under the statute to which reference is above made. Under Section 6 of the act, the State Board may in its discretion waive examination of any person possessing the qualifications named in Section one, and who shall have for more than three years been practicing in this State on his own account as a public accountant.

Yours very truly,

W. H. ELLIS.

FISHING WITH NETS AND SEINES.

Tallahassee, Fla., January 9, 1906.

Dear Sir:

Your letter of the 5th, asking if there is a statute against the use of "stop-net fishing" in Manatee County, has been received.

Chapter 5573 of the Acts of 1905 prohibits any person from catching or taking any food fish in the waters of any fresh water lake in Manatee County, with any seine or net or any set device. The penalty for violating the Act is fixed at not less than twenty-five dollars nor more than five hundred dollars or by imprisonment in the county jail not exceeding six months or by both fine and imprisonment. That is the last expression of the Legislature on the subject of catching fresh water fish in Manatee County.

Chapter 5291 of the Laws of 1903 which prohibited any person from catching with any seine or net any fish in the waters of Manatee County or from using or employing any seines or nets in catching fish in the waters of Manatee County from the 23rd of November to the 31st

of December of each year was repealed by Chapter 5574, Acts of 1905.

Chapter 5431 of the Acts of 1905 prohibits any one from catching, transporting or being in the possession of any fresh shad in this State between the first day of April and the first day of December in each year or from being in possession or transporting any iced shad between the seventh day of April and the first day of December.

Chapter 5433 of the Acts of 1905 prohibits the catching or capturing for the purpose of shipping of any mullet in this State between the 15th day of November and the 31st day of December of any year.

Chapter 5434, prohibits the use of any lime or poisonous minerals in any of the lakes, ponds or fresh water streams for the purpose of killing any of the fishes in said waters.

I have referred to these statutes thinking that the information might be of some service to you.

Chapter 4557 of the Acts of 1897 as amended by Chapter 4878 of the Acts of 1899 prohibits any person from stopping any of the rivers, creeks, bays or bayous on the coast of the State of Florida with any seine, gillnet stop-net or any other net, for the purpose of catching or taking food fish, and it prohibits the use of any seines, stop-nets, haul-nets or any other kind of nets longer than three hundred and fifty yards, or any seines, stop-nets haul-nets or any other kind of nets from being attached together in any manner making a length of more than three hundred and fifty yards, or of any seines, stop-nets, haul-nets or any other kind of nets fastened by stakes or otherwise with ends nearer to each other than one hundred and fifty yards for the purpose of making a stretch or length of more than three hundred and fifty yards for the purpose of taking fish from the rivers, creeks, bays, bayous or other waters of the coast of the State of Florida.

Yours truly,

W. H. ELLIS.

SUMMER SCHOOLS.

Tallahassee, Fla., January 19, 1906.

Dear Sir:

In reply thereto I beg to say that I am not aware of that Summer Schools in this State are under the direction

of the State Superintendent of Public Instruction, whose address is Tallahassee, Florida.

Yours very truly,
W. H. ELLIS.

COUNTY FUNDS NOT TRANSFERABLE.

Tallahassee, Fla., January 19, 1906.

Dear Sir:

Your letter of the 11th inst. has been received.

In reply thereto I beg to say that I am not aware of any statute which authorizes the Board of County Commissioners to transfer moneys in any fund to the School Fund. I think that the expenses incurred for any purpose, by a county, can be met only by the moneys in the fund created by law for that purpose. In regard to the school tax—counties are limited by the Constitution to a tax of seven mills. If a custom of borrowing from other funds could be indulged in, it would be within the power of counties to levy, in effect, more than the seven mills provided by law for that purpose.

I wish to remind you, however, that the statute does not constitute the Attorney General the legal adviser of county officials, consequently my opinion on this question, which affects the county only, cannot in any sence be regarded as official or binding upon any of the county officials.

Yours very truly,
W. H. ELLIS.

DUTIES OF SHERIFFS IN CASES OF ILLEGAL SALE OF LIQUORS.

Tallahassee, Fla., January 19, 1906.

Dear Sir:

I am in receipt of your favor of the 13th inst.

In reply I beg to say that Section 6 of Chapter 4930 of the Acts of 1901, provides that it shall be the duty of the Sheriffs and their deputies, of the various counties of this State, to investigate all cases of violations of the Act of which Section 6 is a part, that may be called to their attention by any citizen of this State, and the

said Sheriffs shall ascertain whether any person to whom their attention has been called, has in his, her, or their possession, a United States Internal Revenue License or Tax Stamp, and if the Sheriffs, or Deputy Sheriffs, find that any person, or persons have in his, her or their possession a United States Internal Revenue License or Tax Stamp, and that said persons are violating or there is good reason to believe that said person or persons are violating the Act, the said Sheriff or Deputy Sheriff shall thereupon make a sworn complaint against such violators, and cause the holder of said license or tax stamp to be arrested.

Section 2 of Chapter 4932, Laws of 1901, provides that it shall be the duty of all Sheriffs, Deputy Sheriffs, Constables and police officers, in their respective jurisrdictions, and they are hereby authorized and empowered to enter any building, booth, tent or other place, or part thereof, with or without warrant, in which they have good cause to suspect that spirituous, vinous or malt liquors are kept for sale, contrary to law, and to seize the same and arrest the parties so engaged in such sales, and if such liquors in such quantities as to confirm the belief of illegal sales of the same be found in the building, booth, tent or other place, the same shall be prima facie evidence of the selling of liquor contrary to law. That section, however, contains a proviso, that it shall not be construed as to apply to persons keeping a reasonable amount of spirituous liquors in his private residence for private use.

The latter part of your letter, relating to one's acting as agent in a prohibition town for a whiskey concern, of another place, is too indefinite as to the agent's method and means of transacting business, to enable me to say whether it is a violation of the statute or not.

Yours very truly,

W. H. ELLIS.

Tallahassee, Fla., January 19, 1906.

Dear Sir:

I am in receipt of your letter of recent date asking for my opinion as to whether a Notary Public who is reappointed and the bondsmen on his old bond are willing to go upon his new bond, would be required to submit

a new bond to the County Commissioners for approval. In reply, I beg to say, that in my opinion he would be required to do so. The old bond is of no value on the new appointment.

Yours very truly,
W. H. ELLIS.

HEAD LIGHTS ON LOCOMOTIVE ENGINES; DEFITION OF MANSLAUGHTER AND ILLUSTRATIONS OF CRIMINAL NEGLIGENCE.

Tallahassee, Fla., January 19, 1906.

Dear Sir:

I am in receipt of yours of recent date asking if there is any "State law in regard to the use of headlights on locomotive engines.' In reply, I beg to say, that there is no statute of this State which requires railroad companies to use headlights in their locomotives.

The statute on the subject of manslaughter is Section 2384 of the Revised Statutes, which defines it to be, "The killing a human being by the act, procurement or culpable negligence of another, in cases where such killing shall not be justifiable or excusable homicide nor murder."

I would not like to undertake to say that any given incident in which a person should come to his death through the operation of an engine, not provided with all improved appliances for the prevention of accidents would be manslaughter.

I am inclined to the opinion that the question of whether an engineer was criminally negligent in the operation of such an engine would depend upon the manner in which the engine was operated in view of its defective appliances. To make my meaning perfectly clear I will illustrate: An engineer may not be held responsible criminally for operating a locomotive at a high rate of speed on a good track, his locomotive being a modern machine, in good condition, fully equipped with all modern appliances for the prevention of accidents, but the same engineer operating a defective engine not equipped with all modern appliances for the prevention of accidents, at the same rate of speed upon a poor track, would probably be guilty of that degree of criminal negligence which would make him answerable to a charge of manslaughter

in the event of an accident resulting in the death of a passenger, employee or other person.

As to the matter of being discharged from one's employment because of his refusal to take out a defective engine or to operate an engine upon a defective track is a matter with which the criminal laws of the State have nothing to do.

Yours very truly,
W. H. ELLIS.

PUBLIC ROADS.

Tallahassee, Fla., January 26, 1906.

Dear Sir:

I am in receipt of your letter of the 18th, asking me if there is any law to "compel logmen to keep in repair public roads used by them on their own land." In reply I beg to say, that Chapter 4946, Act sof 1901, is entitled, "AN ACT to Require Persons Running or Operating Log, or Turpentine Carts or Wagons, or Persons Habitually Hauling Heavy Loads on or over the Public Roads of This State, to Keep the Portion of Such Roads Used by Them in Repair." The penalty fixed for failure to comply with the act is a fine of not less than $25.00 nor more than $500.00 or imprisonment in the county jail not more than six months.

Section 3 of the act makes it the duty of the road superintendent, supervisor or overseer in charge of such public roads to see that the provisions of the act are complied with.

Section 4 of the act provides that the Board of County Commissioners may recover damages from the person, who fails to keep the road in condition, in a civil action brought for that purpose, and shall recover a reasonable attorney's fee.

Yours truly,
W. H. ELLIS.

REGISTRATION BOOKS.

Tallahassee, Fla., February 14, 1906.

My Dear Sir:

I am in receipt of your letter of the 9th. In reply, beg to say, that the law does not provide specifically for open-

ing the Registration Books prior to an election to determine whether intoxicating liquors shall be sold in the county. The general election law as amended by the act of 1897, page 66, provides when the registration books shall be opened, and that no person shall be allowed to register at any other time than during the period named in the act.

Chapter 5249 of the Acts of 1903, provides, that whenever any political party which in the last preceding election cast forty per cent. of the votes cast, shall have called a primary election to be held prior to the time for registration for a general election, the registration books of each county shall be opened for four weeks for registration for such primary.

Yours very truly,
W. H. ELLIS.

INTOXICATING LIQUORS.

Tallahassee, Fla., February 14, 1906.

Dear Sir:

In reply to your letter of the 7th, I beg to say, that it is my opinion that the sale of any intoxicating liquors, wine or beer in any county which has voted against the sale of such liquors would be a violation of the statute. See Chapter 4930, Laws of 1901.

Yours very truly,
W. H. ELLIS.

SPECIAL ELECTIONS.

Tallahassee, Fla., February 14, 1906.

Dear Sir:

I am in receipt of yours of recent date. Replying thereto, I beg to quote you copy of letter to Mr. Thos. V. Shoemaker, of Daytona, Florida, upon the subject of your communication, which is as follows:

"I am of the opinion that a person who wishes to vote in the special election referred to and which is to be held on the 27th of September, must have paid his poll tax on or before the second Saturday in August."

This you will see is the construction placed upon the statute by you.

Yours very truly,
W. H. ELLIS.

COMMISSIONS OF SHERIFF; SERVICE OF PROCESS BY CONSTABLES.

Dear Sir:

Your letter of the 13th has been received. The law does not require the County Commissioners to order the payment to the sheriff of any commission upon the proceeds derived from the hire of county convicts, nor should they order the payment of commissions upon fines not collected. Take the case you cite; a person is sentenced to pay a fine of twenty-five dolllars or be imprisoned in the county jail for ninety days; the fine is not paid, and the person enters upon the sentence of imprisonment; the County Commissioners hire the prisoner out and receive for his labor sixty dollars for the county. The sheriff is entitled to no commission, either upon the fine of twenty-five dollars which was not collected, or upon the sixty dollars received for the labor of the prisoner, because such sum is neither a fine, fee, costs or other money adjudged to the State. See Section 1255, Revised Statutes.

Under Chapter 4133, Acts of 1893, process issued out of the County Judge's Court may be served by a Constable in the district in which the Constable resides. The mileage is computed from his place of residence to the place where the service is made in his district.

Chapter 4989, Acts of 1901, provides, that when the process is issued out of the court for which he is constable may be permitted to serve the process in any district in the county. In that case I think he should be allowed mileage for the miles actually traveled.

The law does not constitute the Attorney General the legal adviser of county officials, and therefore, the views as expressed by me cannot be regarded as official nor binding upon the County Commissioners.

Yours very truly,
W. H. ELLIS,

VIOLATION OF CONTRACT.

Tallahassee, Fla., February 14, 1906.

Dear Sir:

I am in receipt of your favor of the 8th instant, enclosing contract between Walter Barker and A. J. Edwards

& Son, with the request that I advise you, if, under such a contract, a person violates or refuses to comply with its terms can such person be prosecuted under Section 1260, of Justice of the Peace Manuel, (Rev. Stats., Chapter 4032, Appendix.)

I beg to say, that a violation of the above mentioned statute would subject the person violating it to prosecution, but the *intent to defraud at* the *time* of *entering into the contract,* is essential to constitute a violation of the statute, and unless the party making affidavit sets the fact out in such affidavit, that, at the time of entering into the contract, the said ..... did so with the *intent to defraud,* there is no violation of the statute averred.

I herewith return the contract.

Yours very truly,

W. H. ELLIS.

REGISTRATION BOOKS.

Tallahassee, Fla., February 15, 1906.

Dear Sir:

The statute does not specially provide for opening the Registration Books prior to an election to determine whether or not intoxicating liquors shall be sold in a county.

The general election law as amended by the act of 1897 provides when the Registration Books shall be opened, and that no person shall be allowed to register at any other time than during the period named in the act.

Chapter 5249 of the Acts of 1903 provides, that whenever any political party which in the last preceding election cast forty per cent. of the votes cast, shall have called a primary election, the Registration Books of each county shall be opened for four weeks for registration for such primary.

Yours very truly,

W. H. ELLIS,

CLERK CIRCUIT COURT, COMPENSATION AS CLERK OF BOARD COUNTY COMMISSIONERS.

Tallahassee, Fla., February 20, 1906.

Dear Sir:

Your letter of the 16th to hand.

Section 583 of the Revised Statutes provides that the Clerk of the Circuit Court for the county shall be clerk and accountant for the Board of County Commissioners. The Section prescribes his duties as clerk of the board. The ninth paragraph of Section 578, Rev. Stats., provides that the Board of County Commissioners shall have power to regulate the compensation of the County Clerk while acting for the county or Board of County Commissioners.

Section 1395 provides, that as Clerk of the Board of County Commissioners his compensation shall be fixed by the Board of County Commissioners. That section was amended by Chapter 4909 of the Acts of 1901, which provides that the clerk's compensation, as clerk of the Board of County Commissioners shall be fixed by the Board, and upon a basis proportionate to the compensation allowed by law for other services.

I think that it was intended by the Legislature that the Board of County Commissioners should exercise discretion in the matter of fixing the compensation for the clerk of the Court while acting as clerk of the Board of County Commissioners. Unless that discretion has been abused by the board, the courts will not review it. In the meantime, it is the duty of the clerk to act as clerk of the Board for whatever compensation they may see fit to fix, and if he refuses to perform his duty in this regard he may be amenable to the charge of nonfeasance in office.

As to the duties of the Board of County Commissioners, I refer you to Section 578 of the Revised Statutes.

Yours very truly,

W. H. ELLIS.

PROCEEDS FROM SALE OF FORFEITED WEAPONS.

Tallahassee, Fla., February 21, 1906.

Dear Sir:

Section 2424 of the Revised Statutes provides that the

sheriff shall sell the weapons forfeited and account for and pay over the proceeds therefrom as in the case of fines collected. I judge, therefore, that the proceeds of sales should be paid into the Fine and Forfeiture Fund.

Yours very truly,

W. H. ELLIS.

WOMEN NOT ELECTORS.

Tallahassee, Fla., February 21, 1906.

Dear Miss Singleton:

I am in receipt of your letter of the 6th instant.

Section 2 of Chapter 5014 of the laws of 1901, provides that no person can vote or take part in the proceedings of any primary election, who is not by the laws of the State a lawful elector, who has not paid his poll tax legally due and who is not authorized to vote in any legal election in the ward or precinct for which such primary election is held.

As the right of suffrage has not been granted to women in this State, she is not an elctor. The act quoted above seems to require that a person shall be an elector before he is permitted to take part in a primary election in this State. A woman would have to take part in a primary to secure the nomination at the hands of the Democratic party, and as the right to take part in a primary seems to be denied her under the laws of this State, she could not, therefore, be the nominee of the Democratic party.

* * * * * * * * *

Yours very respectfully,

W. H. ELLIS.

COMPENSATION OF SECRETARY OF COUNTY BOARD OF PUBLIC INSTRUCTION.

Tallahassee, Fla., Feb. 24, 1906.

Dear Sir:

I am in receipt of your letter of the 22nd.

I think that the County Board of Public Instruction has the power to compensate you for the services rendered as Secretary of the Board, which may involve the keeping of the accounts for the Special Tax Districts in your

county, but it is my opinion that the County Board of Public Instruction does not possess the power, without the consent of the Trustees of each Special Tax School District, to use any part of the Special School District tax for the purpose of compensating you for your services as Secretary of the Board.

Yours very truly,

W. H. ELLIS.

TAX DEEDS.

Tallahasee, Fla., Feb. 26, 1906.

Dear Sir:

Your letter of the 24th has been received.

Chapter 5150 of the laws of 1903, simply provides for making tax deeds issued and to be issued under the provisions and in the form prescribed by Chapter 4888 of the laws of Florida, prima facie evidence of title. The owner of a piece of land which has been sold for taxes is not obliged to surrender possession, because some one may have acquired a tax deed therefor, until the courts in an action of ejectment pass upon the validity of the tax deed.

Yours very truly,

W. H. ELLIS.

STRAWBERRY WINE, SALE OF IN DRY COUNTY.

Tallahassee, Fla., March 10, 1906.

Dear Sir:

Your letter of recent date to hand.

I am of the opinion that the sale of any intoxicating, spirituous, vinous or malt liquors or wines in any county or precinct which has voted against the sale of such liquors or wines is an offense against the laws of this State, under Chapter 4932 of the acts of 1901 and the amendments thereto, and it occurs to me that wines manufactured from strawberries, if the same is intoxicating would be a violation of the act.

Yours truly,

W. H. ELLIS.

TRUSTEES, SPECIAL TAX SCHOOL DISTRICT.

Tallahassee, Fla., March 10, 1906.

My Dear Sir:

I am in receipt of your letter of recent date relating to the power of the Trustees of Special Tax School Districts, and in reply thereto beg to say, that it is my opinion that the statute does not delegate to the Trustees of the Special Tax School District the power of incurring indebtedness in the manner in which you suggested. I think that the power delegated to them to contract indebtedness must be within the limit which the special tax levied, in the particular district prescribes, and then there must be an equal distribution of those proceeds among all the schools in the district.

I have not given the above subject the investigation which is necessary and consequently I do not feel at all confident of this position.

* * * * * * * *

Yours very truly,

W. H. ELLIS.

SHERIFF'S COMMISSION REGARDING COUNTY CONVICTS.

Tallahassee, Fla., March 19, 1906.

Dear Sir:

Your letter of the 12th to hand. Your compensation for the trouble you are put to in the matter of collecting the sums paid by contractors for the hire of county convicts, should be fixed or regulated by the Board of County Commissioners. In my judgment, as a matter of law, you are not entitled to the 5 per cent. commission.

Yours very truly,

W. H. ELLIS.

COUNTY COMMMISSIONERS AS BOARD OF EQUALIZATION.

Tallahassee, Fla., March 22, 1906.

Dear Sir:

Your letter of the 19th has been received. In reply I beg to say, that the powers of the Board of County Com-

missioners acting as a board of equalizers are defined by Section 26 of Chapter 4322 laws of 1895. Section 22 of the act makes it the duty of the Tax Assessor to ascertain by personal investigation the value of the lands and assess them at their full cash value.

I think that it is the duty of the Tax Assessor to place the valuation upon lands which he is bound to do at their full cash value. The power remains in the Board of County Commissioners to equalize the assessment.

Yours very truly,
W. H. ELLIS.

ROAD OVERSEERS REPORT.

Tallahassee, Fla., March 22, 1906.

Dear Sir:

Your letter of the 19th has been received.

The road overseers are required by law to make a report of the work done and moneys received and expended on the public road over which he is overseer to the road commissioner. That report of course must be complete, and it is not complete unless it shows every item of collection and disbursement.

I wish to say that the Attorney General is not by law made the legal adviser of the Boards of County Commissioners and therefore my opinion in this matter is not binding upon the commissioners.

Yours very truly,
W. H. ELLIS.

ASSESSMENT OF TURPENTINE PPRIVILEGES.

Tallahassee, Fla., March 26, 1906.

Dear Sir:

Chapter 5380 is an amendment to Section 22 of Chapter 4322 of the acts of 1895. The amendment provides, that in case any land shall be timbered and the timber or the right to turpentine the same should belong to a person other than the owner of the land, the assessor shall assess the value of the land independent and distinct from the value of the timber and the turpentine privileges, and

shall assess the value of such timber and such turpentine privileges separate and distinct from the said land and from each other, assessing the value of the land and of the timber and of the turpentine privileges to the owners respectively thereof.

Said statute provides further, that the taxes assessed upon the land, the timber and the turpentine privileges shall be collected as of each of said interests in said land were land itself. I judge from this reading of the statute that in cases where the turpentine privileges are owned by one other than the owner of the land, that the assessor should first assess the land in the name of the owner at its full cash value, less the value of the turpentine privileges; that secondly, he should assess the turpentine privileges on that land in the name of the owner of such privileges at the full cash value thereof, and in doing so I think the land should be described again so as to identify the turpentine privileges assessed.

Yours very truly,

W. H. ELLIS.

DISPOSITION OF CERTAIN WEAPONS.

Tallahassee, Fla., March 29, 1906.

Dear Sir:

Your letter of the 26th to hand. In reply I beg to say, that under Section 2424 of the Revised Statutes, the officer making any arrest under Section 2423 of the Revised Statutes, should take possession of any arms or weapons found upon the person arrested and retain the same until after the trial of said person, and "if he be convicted the said arms and weapons shall be forfeited and the sheriff shall sell the same."

Now Section 2423 as amended by Chapter 4124 of the laws of 1893, provides that whoever when lawfully arrested while committing a breach of peace is armed with or has on his person any firearms or other dangerous weapons shall be punished as therein provided.

Chapter 4929 of the acts of 1901, declares the carrying of concealed weapons to be a breach of the peace; so I judge that if when a person is arrested for carrying concealed weapons, which is a breach of the peace under the

law, and the officer finds the weapon upon the person, he shall retain it and if the person is convicted, confiscate the weapon.

Yours very truly,

W. H. ELLIS.

MINING OF PHOSPHATE.

Tallahassee, Fla., April 14, 1906.

Dear Sir:

Your letter of the 11th addressed to Hon. J. B. Whitfield, Tallahassee, Florida, was referred to me by that gentleman.

In regard to the mining of phosphate in navigable streams I have to say, that Chapter 4980 of the laws of 1901 is the last legislative expression upon that subject, and provides for the payment to the State of Florida of the sum of fifty cents per ton for phosphate rock or phosphate deposits mined or dug or removed, sold shipped or in any way disposed of by persons with whom the Board of Phosphate Commissioners may make contracts for the mining of phosphate.

Yours very truly,

W. H. ELLIS.

WHO LIABLE TO ROAD DUTY.

Tallahassee, Fla., May 3, 1906.

Dear Sir:

Replying to yours of the 30th ultimo, I beg to say that Section 15 of Chapter 4338, Laws of Florida provides as follows: "All maimed or disabled persons who shall procure certificates of such disbility from some licensed practicing physician, persons of unsound mind and ministers in charge of a church shall be exempted from road duty under this act."

Section 12 of the same Chapter provides that every able bodied male person over the age of eighteen years and under the age of forty-five years, resident in any county of this State for thirty days shall be subject and liable to work on the roads and bridges in such county for not more than eight days in each year.

This last provision is clear in its requirements, but the law is equally clear in providing for exemptions under Section 15, hence, if a licensed practicing physician gives a certificate of disability to one subject to road duty it must be regarded as exempting such person from that duty.

Yours very truly,

W. H. ELLIS.

COSTS.

Tallahassee, Fla., May 14, 1906.

Dear Sir:

I am in receipt of yours of the 15th, and in reply beg to say that I think your construction of Section 7 of Chapter 4323 is correct. The act does not provide for the payment of any other costs or expenses but expressly directs that the costs and fees of the commitment trial in cases where no indictment is found against the person shall not be paid by the county, except the cost of executing the warrant. This seems to me to be very clear, although it may work a hardship upon the Sheriff in many cases.

Section 2843 of the Revised Statutes in my judgment, has no bearing upon this question; that section simply provides, that when a person makes affidavit of insolvency and substancial injury in person or property, process shall issue without requiring any payment of cost.

Yours very truly,

W. H. ELLIS.

COUNTY COMMMISSIONERS' DISTRICTS.

Tallahassee, Fla., May 31, 1906

Dear Sir:

Your letter of the 30th to hand.

I am of the opinion that the failure of the Clerk to make a copy of the descriptions of the districts as established by the County Commissioners under Constitutional amendment, adopted 1901, and to certifiy to the correctness of the same, and to transmit it to the Secretary of State as required by Section 576 of the Revised Statutes does not operate to invalidate the action of the Board in laying out districts. There is no penalty attaching to

such failure, and I am of the opinion that it does not lie ithin the power of the Clerk, if he should see fit to do so, to capriciously nullify the action of the County Commissioners in defining commissioners districts by a mere faiiure to tra-nsmit a copy of the description of such list to the Secretary of State.

Yours very truly,

W. H. ELLIS.

FEES.

Tallahassee, Fla., June 15, 1906.

Dear Sir:

Your letter of the ninth has been received. In reply I beg to say that from my understanding of the situation described by you, I would say that no mileage had been earned within the meaning of the statute and consequently none should be paid.

Section 1305 of the Revised Statutes provides that "No officer shall make two charges for the same official act or service, nor charge for any constructive service, and no fees shall be charged in any case or for any official service performed or claimed to be performed by any officer within the State unless said fees be expressly authorized and their amounts be specified by law."

I judge from your statement of the case that you arrested the person against whom the warrant was issued. If you made the arrest I presume that the warrant was properly endorsed by a Judge or Justice of the Peace in Madison County as required by Section 2872 of the Revised Statutes.

Yours very truly,

W. H. ELLIS.

"DRY COUNTY," "WET COUNTY" DEFINED.

Tallahassee, Fla., June 15, 1906.

Dear Miss:

Your letter of the 5th has been received.

I understand by the use of the term "Dry County" that it means a county in which the people have voted against

the sale of intoxicating liquors. In such a county the sale of domestic wines is a violation of the law.

A "Wet County" is a county in which the people have voted for the sale of intoxicating liquors. In such a county a license is required for the sale of spirituous, vinous or male liquors except domestic wines which may be sold in quantities of one quart by the manufacturer thereof. Makers of domestic wines are not permitted to mix the same with other liquors or adulterate the same. See Section 11, Chapter 5106, Acts of 1903.

Yours very respectfully,

W. H. ELLIS.

COUNTY COMMISSIONERS MAY MAKE CONTRACT FOR LEGAL SERVICES.

Tallahassee, Fla., June 18, 1906.

Dear Sir;

Your letter of recent date to hand. In reply I beg to say that I am of the opinion that it is proper for the Board of County Commissioners in the exercise or its power as the custodian and guardian of the County's property and finances to make a contract by the year for legal services with a lawyer or lawyers whose advice, in its judgment, it needs and requires, and I think such a contract would be perfectly valid and binding, even if the personel of the board should change.

I would suggest that a contract be not made for a longer period than one year and that it be made to run from January to January.

Yours very truly,

W. H. ELLIS.

SPECIAL TAX SCHOOL DISTRICTS.

Tallahassee, Fla., June 29, 1906.

Dar Sir:

Your letter of the 22nd to hand. In reply I beg to say that I think that Chapter 4678 of the laws of 1899 would permit the holding of an election in the Houston and Rixford Special Tax Districts, in view of the facts that

no valid elections have been held in those districts. Section 8 of the act provides, that the elections shall be held bi-ennially as near as practicable upon the anniversary of the original election. I think that the statute is imperative, that the election shall be held bi-ennially to determine the number of mills to be levied as district school tax.

Under the general law the county commissioners have the power to extend the time for the completion of the assessment roll. I think they would be authorized to extend the time for the completion of the assessment roll, in order that your county may hold the elections in the districts.

The present trustees would remain in office until their successors are elected and qualified. The present board of trustees would not be authorized to designate a millage for the special tax district for any year for which no election has been held for that purpose.

Yours very truly,

W. H. ELLIS.

MANDAMUS.

Tallahassee, Fla., June 30, 1906.

Dear Sir:

I am in receipt of your letter of recent date relating to the subject of mandamus proceedings against the Pensacola Electric Terminal Co., to compel it to comply with the charter granted by the city of Pensacola, in which it is required that the road-beds of their tracks should conform to the grade of the street, and mandamus proceedings against the Board of Public Works to compel the abatement of a nuisance.

In reply I beg to say, that as to the matter of the mandamus proceedings against the electric company, I think that mandamus proceedings may be instituted in the name of the State upon the relation of a private citizen. I respectfully suggest that you look at the case of McConihe, Mayor, vs. State ex rel. McMurry, 17 Fla. 271 text, also State ex rel. Scott vs. The Board of County Commissioners of Jefferson County, 17 Fla. 714 text; State ex rel. Fleming vs. Crawford, 28 Fla. 510 text, and F. C. & P. R. R. Co., vs. State Ex rel, Tavares, 31 Fla. 504.

In the latter case the language of the opinion is, that "Where the object is the enforcement of a public right, the people are regarded as the real party, and the relator need not show that he has any legal interest in the result. It is enough that he is interested in the result. It is enough that he is interested as a citizen in having the law executed and the duty in question enforced."

That language tagen from the 14 Am. & Eng. Enc. of Law, page 218 (1st ed) was approvingly quoted and adopted said the court in the McConihe case.

As to your application for authority to institute in the name of the Attorney General mandamus proceedings against the Board of Public Works, to compel the abatement of a nuisance, the same rule will hold.

Yours very truly,

W. H. ELLIS.

SPECIAL TAX SCHOOL DISTRICTS.

Tallahassee, Fla., June 30, 1906.

Dear Sir:

Your letter of recent date to hand. In reply I beg to say that the question submitted is one which is involved in some obscurity, and I think would require a decision of the Supreme Court for settlement. I will state, however, that it is a ruling of the Superintenden's Department, and such is also my view, that in an election in a special tax school district, where there were one hundred and thirty-nine (139 ballots cast, of which only forty-seven (47) were cast for millage, and the remaining ballots contained no indication of what millage was desired, that the rate of millage which received a majority of the forty-seven (47) ballots would be the rate to be assessed under Chapter 4678, Laws of 1899.

Yours very truly,

W. H. ELLIS.

FEES, CORONER'S INQUEST.

Tallahassee, Fla., July 4, 1906.

Dear Sir:

Yours letter of recent date to hand.

In regard to holding inquest of the dead, I beg to say, that I think a coroner is entitled to the followin fees:

Summoning jury, taking inquisition on dead body and return thereof $3.00.

Five cents per mile for each mile to and from the place of inquest by the nearest practical route.

Administering oath, 6 cents.

Issuing order for witnesses 20 cents. All witnesses muse be embraced in one order.

For service rendered under Sec. 2036, Rev. Stats., 20 cents for the first 100 words.

Filing any paper required to be filed, 5 cents.

Issuing warrant under Sec 3023, Rev. States., 40 cents.

I think the Sheriff is entitltde to the following fees:

Attending inquest $3.00.

Mileage, 10 cents for each mile traveled going to and from place of inquest by the nearest practical route.

Return of venire, 10 cents.

Service of order for witness, 20 cents; when under Sec. 3018 Revised Statutes. It becomes necessary for the coroner to send his warrant for witnesses.

Copy of same, 15 cents for first 100 words or less, and 8 cents for every subsequent 100 words.

This is made up without the full investigation that I would like to give it. On account of the work in my office, I have not the time to write you as fully on this matter as I would like, nor have I the time to give the subject the investigation which it should have.

Yours very truly,

W. H. ELLIS.

LICENSE TO PEDDLE.

Tallahassee, Fla., July 21, 1906.

Dear Sir:

Your letter of the 19th to hand.

Section 43 of Chapter 5106, Laws of 1903, prescribes who shall be deemed a peddler, under the act. Section 33 prescribes the tax which peddlers are required to pay.

Section 57 prescribes the penalty for carrying on or conducting any business for which a license is required without first obtaining such license.

Chapter 4026 of the Acts of 1891 prescribes in Section 1, that whenever a court or jurge should, under the criminals laws of this State, sentence and adjudge a person to pay a fine or a fine and costs of prosecution, such judge shall also provide in such sentence a period of time for which such person shall be imprisoned in the county jail in default of payment of the same. That act has been construed by the Supreme Court in the case of Bueno v. State, 40 Fla. 160, and in Eggert v. State, 40 Fla. 527. In this connection I also refer you to Chapter 4075, Acts of 1891.

I am not aware that Sections 43 and 33 of Chapter 5106 have ever been declared unconstitutional.

In October of 1905, the Wrought Iron Range Company of St. Louis, Mo., through its agents, was engaged in the business of selling stoves in this State. Its method was to ship a quantity of stoves to its agent at some place in the State. Its agents would then go about the country in wagons, sell stoves and make delivery of them from the warehouse in which they were stored. They did not attempt to make sales of the stoves until they had been received in this State and placed in a warehouse by the agent of the company. In other words, the orders for the stoves were not filled in Missouri, but they were filled in this State.

On the facts which were submitted to me I gave the Hon. Comptroller an opinion to the effect that the Wrought Iron Range Company was not engaged in interstate commerce. After this opinion was rendered, one of its agents was arrested in Suwannee County, charged with violating Chapter 5106, in not obtaining a license as a peddler. This agent applied to the United States Court for the Southern District of Florida for an injunction to restrain the Tax Collector from enforcing the collection of the tax. I am not advised of the decision of the court.

I have heard, however, that the court held that the agents of the company were engaged in interstate commerce, and that Sections 43 and 33 of Chapter 5106 did not apply.

Yours very truly,

W. H. ELLIS.

COUNTY COMMISSIONERS, POWER TO LEVY. TAX FOR COUNTY SCHOOL PURPOSES.

Tallahassee, Fla., July 21, 1906.

Dear Sir:

Your letter of recent date to hand. In reply, I beg to say that it is my opinion that the County Commissioners have the right to determine what amount shall be raised for County School purposes, and that the power is vested in them to make the levy to raise that amount.

Yours very truly,

W. H. ELLIS.

JUSTICES OF THE PEACE.

Tallahassee, Fla., July 21, 1906.

Dear Sir:

I am in receipt of your letter of recent date, and in reply, I beg to say that a justice of the peace hasn't jurisdiction to try a case brought under Chapter 4930 of the Laws of 1901. A justice of the peace, however, may hold a preliminary investigation when one is charged before him with violating the chapter, and if the evidence justifies it, hold the accused to answer to the charge before the Circuit Court; to this end he may require the accused to give bond for his appearance at the next term of the Circuit Court. He may also require the witnesses to enter into bond for their appearance before the grand jury to testify against the accused.

When a justice of the peace has discharged his duty as committing magistrate his jurisdiction ends. It remains then with the grand jury as to whether the accused will be prosecuted. In the meantime, and while the person is awaiting his trial in the Circuit Court, the United States Court ought not to take jurisdiction.

Yours very truly,

W. H. ELLIS.

CLERKS CIRCUIT COURT TO KEEP CERTAIN RECORDS.

Tallahassee, Fla., August 7, 1906.

Dear Sir:

Your letter of the 31st ultimo to hand.

I think that Section 2798 of the Revised Statutes contemplates a short record of the names of persons convicted of crimes to be kept by the Clerk of the Circuit Court; the data for such record to be furnished him by the clerks of the other courts in the county having criminal jurisdiction or County Judge or justices of the peace under Section 2799 of the Revised Statutes.

I think that the Clerk of the Circuit Court would be entitled to the same fee that he receives for recording any paper.

Yours very truly,

W. H. ELLIS.

CARRYING WEAPONS.

Tallahassee, Fla., August 7, 1906.

Dear Sir:

Your letter of recent date to hand, and in reply I beg to say, that a permit to carry a gun does not authorize one to carry a pistol secretly upon his person. I think that to carry a pistol in a pocket so that the handle is visible is a violation of the statute.

Yours very truly,

W. H. ELLIS.

COUNTY FUNDS.

Tallahassee, Fla., August 26, 1906.

Dear Sir:

Your letter of the 10th inst., has been received.

The law requires County Treasurers to keep the funds of the county separately, and to dispose of no funds, except upon warrants properly drawn by the proper authorities.

Chapter 5383, Laws of 1905, which is an act providing State aid further than the one-mill school tax, etc., makes the provision that the County School Board shall use no part of the funds until the expiration of the school term maintained by the county. It is very evident that it was the purpose of the Legislature to keep the appropriation made by Chapter 5383 strictly for the purpose set out in the act, and I doubt if the County School Board can put it to the use indicated in your letter. Your letter is not very full, and I, therefore, may not have understood it, but I have answered it to the best of my ability.

Yours very truly,

W. H. ELLIS.

IMPOUNDING CATTLE.

Tallahassee, Fla., August 23, 1906.

Dear Sir:

Your letter of the 16th inst., has been received, and in reply thereto, I beg to say that Chapter 4190, Laws of 1893, provides that no town, village or hamlet within the State of Florida, with less than twelve hundred bona fide inhabitants shall have authority or right to impound any cattle of residents who live without the limits of its corporation. Unless the town or village is incorporated, they could not adopt an ordinance regulating the running at large of cattle in the district. I do not believe that a public meeting of the citizens residing is any particular district or section of the county, at which a resolution might be passed prohibiting the running at large of cattle, would be binding upon any one not represented at that meeting, nor, in my judgment, could such resolution under any circumstances, be given the force and effect of law.

Yours very truly,

W. H. ELLIS.

REPORTS

OF

State Attorneys and Solicitors

OF THE

Criminal Courts of Record.

FIRST JUDICIAL CIRCUIT.

Jackson county has been omitted from this circuit on account of this office not having been furnished with the requisite information.

ESCAMBIA COUNTY.

From January, 1905, to January, 1907.

CRIME CHARGED.	White Males.	White Females.	Colored Males.	Colored Females.	Convicted, white.	Convicted, colored.	Acquitted.	Pleaded Guilty.	Discharged.	Nol Prossed.	Not in Custody.	Continued.	Indictment Quashed.	Totals.
Murder	1		3		1	2			1					4
Manslaughter			1							1				1
Totals	1		4		1	2			1	1				5

HOLMES COUNTY.

From January, 1905, to January, 1907.

CRIME CHARGED.	White Males.	White Females.	Colored Males.	Colored Females.	Convicted, white.	Convicted, colored.	Acquitted.	Pleaded Guilty.	Discharged.	Nol Prossed.	Not in Custody.	Continued.	Indictment Quashed.	Totals.
Obtaining property under false pretences	2											2		2
Assault with intent to murder	3		2		1	2						2		5
Shooting into a dwelling	5				2		1					2		5
Murder	2		2			1	1					2		4
Attempting to have carnal intercourse with female under 18 years of age	1											1		1
Carrying concealed weapons	1		1		1	1								2
Having in possession sheep-killing dog	1						1							1
Manslaughter			1			1								1
Incest	1				1									1
Aggravated assault	1				1									1
Forgery	2		1		2	1								3
False promises			2			2								2
Embezzlement	1				1									1
Keeping house of ill fame		2							2					2
Failure to support wife	1				1									1
Lewd and lascivious conduct			1	1					2					2
Resisting an officer	1						1							1
Larceny	1						1							1
Assault with intent to commit manslaughter			2			1		1						2
Totals	23	2	12	1	10	9	5	1	4			9		38

SANTA ROSA COUNTY.

From January, 1905, to January, 1907.

CRIME CHARGED.	White Males.	White Females.	Colored Males.	Colored Females.	Convicted, white.	Convicted, colored.	Acquitted.	Pleaded Guilty.	Discharged.	Nol Prossed.	Not in Custody.	Continued.	Indictment Quashed.	Totals.
Breaking and entering with intent to commit a misdemeanor	2									2				2
Assault with intent to murder	2		12		1	8	2		2			1		14
Burglary			2			1			1					2
Aggravated assault			1			1								1
Crime against nature			1				1							1
Selling liquor without license	9		3		1	1	1		1		4		4	12
Breaking and entering	1		5			3						1	2	6
Murder	2		1			1	1					1		3
False promises	1				1									1
Mansalughter	2		1			2	1							3
Obtaining property under false pretenses	1				1									1
Peddling without license	1				1									1
Larceny			1			1								1
Arson			1			1								1
Aggravated assault			1			1								1
Resisting an officer			2			1				1				2
Aiding prisoner to escape			1			1								1
Maliciously shooting into a dwelling				1		1								1
Robbery			1			1								1
Totals	21		33	1	5	24	6		4	3	4	3	6	55

WALTON COUNTY.

From January, 1905, to January, 1907.

CRIME CHARGED.	White Males.	White Females.	Colored Males.	Colored Females.	Convicted, white.	Convicted, colored.	Acquitted.	Pleaded Guilty.	Discharged.	Nol Prossed.	Not in Custody.	Continued.	Indictment Quashed.	Totals.
Attempting to obtain money by false pretenses			1			1								1
Larceny	2								2					2
Breaking and entering with intent to commit a misdemeanor	1		2			2	1							3
Attempt to rape			1									1		1
Violating local option law	9		15		3	5	2	6	1	1		6		24
Assault with intent to murder	5		9		2	7		1		2		2		14
Resisting an officer	2											2		2
Drunkeness	1											1		1
Carrying concealed weapons	1											1		1
Murder	3		3	1		3				2		2		7
Contempt	1								1					1
Placing obstruction on railroad track			2			1	1							2
Burglary			1			1								1
Rape			1				1							1
Breaking and entering with intent to commit a felony			3			2						1		3
Incest			2									2		1
Manslaughter			2			2								2
Aggravated assault			1			1								1
Having carnal intercourse with unmarried female under 18 years of age	1				1									1
Malpractice in office	1									1				1
Gambling			5			5								5
Embezzlement	1		1						1			1		2
Robbery	1				1									1
Attempt to break with intent to commit a felony			1											1
Arson	1											1		1
Totals	30		50		7	30	5	7	5	6		20		80

WASHINGTON COUNTY.

From January, 1905, to January, 1907.

CRIME CHARGED.	White Males.	White Females.	Colored Males.	Colored Females.	Convicted, white.	Convicted, colored.	Acquitted.	Pleaded Guilty.	Discharged.	Nol Prossed.	Not in Custody.	Indictment Quashed.	Continued.	Totals.
Larceny			3			3								3
Assault with intent to murder	1	2				2	1							3
Assault with intent to commit manslaughter	2				2									2
Assault and battery	2				2									2
Assault with intent to rape.		1				1								1
Murder		3				2	1							3
Larceny	2						2							2
Perjury			1			1								1
Accessory to murder		1				1								1
Trespass	2				1				1					2
Obtaining money under false pretenses	1						1							1
Totals	10	7	4		5	10	5		1					21

SECOND JUDICIAL CIRCUIT.

CALHOUN COUNTY.

From January, 1905, to January, 1907.

CRIME CHARGED.	White Males.	White Females.	Colored Males.	Colored Females.	Convicted, white.	Convicted, colored.	Acquitted.	Pleaded Guilty.	Discharged.	Nol Prossed.	Not in Custody.	Continued.	Indictment Quashed.	Totals.
Aggravated assault	4				3							1		4
Larceny	3		8		3	3		3				2		11
Burglary	1		3		1	1						2		4
Murder	4		2		2	1		1			1	1		6
Using horse without consent of owner			2			1		1						2
Falsely and maliciously imputing want of chastity to an unmarried female	4				1		1					2		4
Selling intoxicating liqour without a license	1	1		1	1	1	1							3
Manslaughter	1				1									1
Bigamy			2			1		1						2
Unlawfully marrying with negro blood	2	2	1		2			1				2		5
Assault with intent to murder	4						1					3		4
Assault and battery	2							2						2
Forgery	2						1					1		21
Totals	28	3	18	1	14	8	4	9			1	14		50

FRANKLIN COUNTY.

From January, 1905, to January, 1907.

CRIME CHARGED.	White Males.	White Females.	Colored Males.	Colored Females.	Convicted, white.	Convicted, colored.	Acquitted.	Pleaded Guilty.	Discharged.	Nol Prossed.	Not in Custody.	Continued.	Indictment Quashed.	Totals.
Aggravated assault			1	1		2								2
Unlawfully concealing birth of a child		1			1									1
Assault with intent to murder			6			3					2	1		6
Larceny	1		1	1		2	1							3
Murder			4			4								4
Burglary			3			2	1							3
Assault and battery			1			1								1
Manslaughter			1					1						1
Desertion and non-support of wife			1										1	1
Totals	1	1	18	2	1	14	2	1			2	1	1	22

GADSDEN COUNTY.

From January, 1905, to January, 1907.

CRIME CHARGED.	White Males.	White Females.	Colored Males.	Colored Females.	Convicted, white.	Convicted, colored.	Acquitted.	Pleaded Guilty.	Discharged.	Nol Prossed.	Not in Custody.	Continued.	Indictment Quashed.	Totals.
Aggravated assault	2		6			5	1				2			8
Murder			2			2								2
Burgary			7			6	1							7
Breaking and entering with intent to commit larceny.			1			1								1
Unlawfully aiding prisoner to escape			3			2			1					3
Assault with intent to murder	1		8	2	1	3	4				3			11
Uttering forged instrument.	1		7		1					2	5			8
Keeping gambling house....			1			1								1
Mansalughter				1		1								1
Selling intoxicating liquor without license	1		13			3	1			4		6		14
Larceny	1		3		1	1				1		1		4
Assault with intent to commith manslaughter			1			1								1
Breaking and entering with intent to commit misdemeanor			3			3								3
Fornication	5		2	8						1		14		15
Crime against nature			1									1		1
Rape			3				2					1		3
Obtaining property under false pretenses			2								2			2
Malpractice in office	1										1			1
Totals	12		63	11	3	28	9		1	8	13	23		86

JEFFERSON COUNTY.

From January, 1905, to January, 1907.

CRIME CHARGED.	White Males.	White Females.	Colored Males.	Colored Females.	Convicted, white.	Convicted, colored.	Acquitted.	Pleaded Guilty.	Discharged.	Nol Prossed.	Not in Custody.	Continued.	Indictment Quashed.	Totals.
Murder			2			2								2
Burglary			6			5			1					6
Assault with intent to murder			6			1		2			3			6
Larceny	3		1		3						1			4
Aggravated assault			5			3			2					5
Carrying concealed weapons			5			3					1	1		5
Adultery	3	3							2			4		6
Accessories after the fact to murder			3			3								3
Carrying a pistol without a license			1			1								1
Violating local option law	6		8	1	2	4			2	1	1	5		15
Manslaughter			1			1								1
Publicly using indecent language	3				3									3
Aiding prisoner to escape			6						6					6
Arson			1						1					1
Resisting an officer			1									1		1
Totals	15	3	46	1	8	23		2	14	1	6	11		65

LEON COUNTY.

From January, 1905, to January, 1907.

CRIME CHARGED.	White Males.	White Females.	Colored Males.	Colored Females.	Convicted, white.	Convicted, colored.	Acquitted.	Pleaded Guilty.	Discharged.	Not Prossed.	Not in Custody.	Continued.	Indictment Quashed.	Totals.
Assault with intent to murder			3			3								3
Murder	1		5			2	4							6
Larceny	1		9			5	4					1		10
Unlawfully selling mortgaged property			2			1		1						2
Uttering a forgery	1				1									1
Trespass			1	1		2								2
Aggravated assault			2			1		1						2
Burglary	1		2		1		2							3
Violating local option law	8		20		2	14	5	1		4		2		28
Breaking and entering with intent to commit a misdemeanor	1		4	1	1	2		3						6
Forgery	3											3		3
Having carnal intercourse with unmarried female under 18 years old	1									1				1
Assault with intent to rape			2				2							2
Trespass			2						2					2
Accessory before the fact to murder			4				4							4
Arson			4							2		2		4
Totals	17		60	2	5	30	21	6	2	7		8		79

LIBERTY COUNTY.

From January, 1905, to January, 1907.

Only cases in which defendants were convicted in this county have been reported.

CRIME CHARGED.	White Males.	White Females.	Colored Males.	Colored Females.	Convicted, white.	Convicted, colored.	Acquitted.	Pleaded Guilty.	Discharged.	Not Prossed.	Not in Custody.	Continued.	Indictment Quashed.	Totals.
Robbery	1		3		1	3								4
Murder			3			2					1			3
Selling intoxicating liquor without license			1			1								1
Assault with intent to murder			1			1								1
Obstructing an officer in the legal discharge of his duty			1			1								1
Obtaining property under false pretenses			1			1								1
Totals	1		10		1	9					1			11

WAKULLA COUNTY.

From January, 1905, to January, 1907.

Only case in which defendants pleaded guilty or were convicted in this county have been reported.

CRIME CHARGED.	White Males.	White Females.	Colored Males.	Colored Females.	Convicted, white.	Convicted, colored.	Acquitted.	Pleaded Guilty.	Discharged.	Not Prossed.	Not in Custody.	Continued.	Indictment Quashed.	Totals.
Murder			3			3								3
Assault with intent to murder			2			1		1						2
Selling intoxicating liquor without a license	1						1							1
Throwing dangerous missiles into occupied car			1			1								1
Burglary			1			1								1
Aggravated assault			1			1								1
Totals	1		8			7	1	1						9

THIRD JUDICIAL CIRCUIT.

MADISON COUNTY.

From January, 1905, to January, 1907.

The Five remaining counties of this circuit have been omitted on account of this office not having been furnished with the necessary information.

CRIME CHARGED.	White Males.	White Females.	Colored Males.	Colored Females.	Convicted, white.	Convicted, colored.	Acquitted.	Pleaded Guilty.	Discharged.	Nol Prossed.	Not in Custody.	Continued.	Indictment Quashed.	Totals.
Arson			3			1				1		1		3
Lewd and lascivious behavior	3	3										2	4	6
Selling intoxicating liquor without a license	2		4				2				2	2		6
Having carnal intercourse with an unmarried female under 18 years of age	3		4				1			1		4	1	7
Assault with intent to murder	4		5	1		1	3				2	4		10
Breaking and entering with intent to commit a felony.			2								1	1		2
Selling mortgaged property.	4						1					3		4
Murder	1		2		1						1	1		3
Embezzlement	2											2		2
Forgery	2											2		2
Carrying concealed weapon.	1				1									1
Uttering a forgery	1									1				1
Mansalughter	1				1									1
Rape			1				1							1
Breaking and entering with intent to commit a misdemeanor			1								1			1
Making threats with intent to compel a person to do an act against his will	1											1		1
Obtaining money under false pretense	1											1		1
Incest			1			1								1
Crime against nature			1			1								1
Larceny	1			2		1	1	1						3
Cutting fence enclosing land of another			1									1		1
Totals	25	3	27	3	3	5	9	1		3	9	27	1	58

FOURTH JUDICIAL CIRCUIT.

CLAY COUNTY.

From January, 1905, to January, 1907.

CRIME CHARGED.	White Males.	White Females.	Colored Males.	Colored Females.	Convicted White.	Convicted Colored.	Acquitted.	Pleaded Guilty.	Discharged.	Nol Prossed.	Not in Custody.	Continued.	Indictment Quashed.	Totals.
Doing business without a license	9		1			1				3		6		10
Assault with intent to murder	2		4			1		1		2		2		6
Breaking and entering	1		1					2						2
Robbery			2					2						2
Rape			1			1								1
Murder			2			1					1			2
Embezzlement			1									1		1
Attempting to utter a forged instrument	1							1						1
Violating local option law	1		3					2				2		4
Assault with intent to commit manslaughter			2			2								2
Adultery	1	1										2		2
Aggravated assault			2									2		2
Obtaining money under false pretences			1									1		1
Totals	15	1	20			6		8		5	1	16		36

DUVAL COUNTY.

From January, 1905, to January, 1907.

CRIME CHARGED.	White Males.	White Females.	Colored Males.	Colored Females.	Convicted White.	Convicted Colored.	Acquitted.	Pleaded Guilty.	Discharged.	Nol Prossed.	Not in Custody.	Continued.	Indictment Quashed.	Totals.
Murder	9		10	1	1	5	4			2		8		20
Rape			5			5								5
Totals	9		15	1	1	10	4			2		8		25

NASSAU COUNTY.

From January, 1905, to January, 1907.

CRIME CHARGED.	White Males.	White Females.	Colored Males.	Colored Females.	Convicted White.	Convicted Colored.	Acquitted.	Pleaded Guilty.	Discharged.	Nol Prossed.	Not in Custody.	Continued.	Indictment Quashed.	Totals.
Attempt to commit arson ..	1		1								2			2
Destroying and damaging telegraph wires and fixtures	2										2			2
Murder			4	1		3		2						5
Larceny			3				1	2						3
Assault with intent to murder			2	2		1	2	1						4
Assault			2			1		1						2
Aggravated assault	1		1							1		1		2
Breaking and entering railroad car	3		3			2				1	3			6
Breaking and entering			4	1		3		2						5
Falsely reporting contageous disease			1							1				1
Selling mortgaged property.			1							1				1
Hayhem			1			1								1
Obtaining property under false pretenses	1							1						1
Doing business without a license	1							1						1
Assault with intent to commit manslaughter			1					1						1
Selling liquor without license			2					2						2
Aiding prisoner in attempting to escape				1		1								1
Totals	9		26	5		12	3	13		4	7	1		40

ST. JOHNS COUNTY.

From January, 1905, to January, 1907.

CRIME CHARGED.	White Males.	White Females.	Colored Males.	Colored Females.	Convicted White.	Convicted Colored.	Acquitted.	Pleaded Guilty.	Discharged.	Nol Prossed.	Not in Custody.	Continued.	Indictment Quashed.	Totals.
Murder	1		6			3	2			1		1		7
Larceny	2		19		2	13		6						21
Breaking and entering			7			4	1	2						7
Entering railroad car with intent to commit a misdemeanor			1			1								1
Entering building with intent to commit felony			4			2		2						4
Assault with intent to murder	7		21	3	1	7		14		1		8		31
Doing business without a license	2		3			1		1				3		5
Robbery			2			2								2
Aggravated assault	2		4	2		1	1	4			1	1		8
Fogery			1							1				1
Assault with intent to rape			2			2								2
Uttering a forgery			1					1						1
Receiving stolen property			2				2							2
Manslaughter	2		1		1							2		3
Wantonly shooting and maning animal of another	1											1		1
Embezzlement	5											5		5
Drawing check on bank without sufficient funds to meet same	1											1		1
Breaking and entering with intent to commit a misdemeanor			4			2		2						4
Imputing want of chastity to a woman			1					1						1
Selling intoxicating liquor without a license			1					1						1
Assault			2			2								2
Criminal violation written contract			1								1			1
Totals	23		83	5	4	40	6	34		3	2	22		111

FIFTH JUDICIAL CIRCUIT.

CITRUS COUNTY.

From January, 1905, to January, 1907.

CRIME CHARGED.	White Males.	White Females.	Colored Males.	Colored Females.	Convicted White.	Convicted Colored.	Acquitted.	Pleaded Guilty.	Discharged.	Nol Prossed.	Not in Custody.	Continued.	Indictment Quashed.	Totals.
Murder	6		3	1	1	1	2					3	3	10
Keeping gambling house			4			1					1	2		4
Maning animal	1				1									1
Violating local option law.	1		27		1	9	4	1		2		11		28
Larceny			6	1		4		1		1		1		7
Keeping house of ill fame			1			1								1
Assault and battery			5			3		1				1		5
Stopping river with fish trap	3									1		2		3
Carrying concealed weapons			2			1						1		2
Breaking and entering			11			6	2				1	2		11
Assault with intent to murder	10		11			2	5			4		10		21
Aggravated assault			2								2			2
Vagrancy			1	3		4								4
Trespass on State lands	5				2							3		5
Adultery	1				1									1
Totals	27		73	5	6	32	13	3		8	4	36	3	105

HERNANDO COUNTY.

From January, 1905, to January, 1907.

CRIME CHARGED.	White Males.	White Females.	Colored Males.	Colored Females.	Convicted White.	Convicted Colored.	Acquitted.	Pleaded Guilty.	Discharged.	Nol Prossed.	Not in Custody.	Continued.	Indictment Quashed.	Totals.
Violating local option law.	6		5			1	2	1		1	1	5		11
Murder			2			2								2
Fraudulently removing mortgaged property			2									2		2
Fogery				1			1							1
Attempting to bribe officer			1			1								1
Assault with intent to murder	4	2	3			1						7	1	9
Carrying concealed weapons			2			1					1			2
Larceny	1		2				1				1	1		3
Unlawfully killing hogs of another			2			1					1			2
Aggravated assault	1		1	1		1		1				1		3
Adultery			1	1		2								2
Selling mortgaged property			1							1				1
Embezzlement	1									1				1
Falsely imputing want of chastity to female	1											1		1
Breaking and entering			7	1		6	1				1			7
Manslaughter			1			1								1
Failure to have marks of cattle inspected	1											1		1
Enticing labor	1											1		1
Obtaining property under false pretenses			1			1								1
Obstructing an officer			1				1							1
Totals	16	2	32	4		18	6	2		3	5	19	1	54

LAKE COUNTY.

From January, 1905, to January, 1907.

CRIME CHARGED.	White Males.	White Females.	Colored Males.	Colored Females.	Convicted White.	Convicted Colored.	Acquitted.	Pleaded Guilty.	Discharged.	Nol Prossed.	Not in Custody.	Continued.	Indictment Quashed.	Totals.
Larceny	6		2				4					4		8
Arson			1			1								1
Embezzlement	1		1								1	1		2
Aggravated assault			2			1		1						2
Carrying concealed weapons	1		1									2		2
Murder			4			3	1							4
Assault with intent to murder			7	1		4		2			1	1		8
Breaking and entering	1		2	1		2	1	1						4
Uttering a fogery			2			1					1			2
Fogery			2								2			2
Fishing during closed season	2		1	2	1							4		5
Manslaughter			2			1		1						2
Violating local option law	1		1			1						1		2
Assault with intent to rape			3			2				1				3
Carnal intercourse with unmarried female under 18 years of age			1				1							1
Rape			1			1								1
Totals	12		33	4	1	17	7	5		1	5	13		49

MARION COUNTY.

From January, 1905, to January, 1907.

CRIME CHARGED.	White Males.	White Females.	Colored Males.	Colored Females.	Convicted White.	Convicted Colored.	Acquitted.	Pleaded Guilty.	Discharged.	Nol Prossed.	Not in Custody.	Continued.	Indictment Quashed.	Totals.
Selling intoxicating liquor without a license	1		5	1			2	1				4		7
Assault with intent to murder	6		21	1		6	5			3	7	7		28
Murder	1		3	2		3	2					1		6
Attempt to commit larceny			1				1							1
Larceny	1		7		1	5	1			1				8
Obtaining property under false pretenses	1		1		1								1	2
Wantonly killing a horse			1			1								1
Aggravated assault	1		3			2		1			1			4
Fogery	2							2						2
Breaking and entering railroad car			1										1	1
Malicious mischief	2						2							2
Bribery	2						1					1		2
Carrying concealed weapin	4		1		1	1						3		5
Embezzlement	3		1				1					3		4
Manslaughter			3		1		1	1						3
Resisting an officer			1							1				1
Killing hogs of another when not having lawful fence	1									1				1
Assault and batteery	1		1		1		1							2
Trespass	1		4									5		5
Attempt to break and enter			1			1								1
Breaking and entering			1			1								1
Obstructing an officer			1									1		1
Rape			1				1							1
Dangerous exhibition of fire arms			1									1		1
Enticing away labor	1		1							1		1		2
Unlawful conspiracy in restraint of trade	5											5		5
Assault with intent to rape			2			1	1							2
Assault				1		1								1
Entering with intent to commit a misdemeanor			1				1							1
Mayhem	1											1		1
Totals	34		63	5	5	22	20	5		7	8	33	2	102

SUMTER COUNTY.

From January, 1905, to January, 1907.

CRIME CHARGED.	White Males.	White Females.	Colored Males.	Colored Females.	Convicted White.	Convicted Colored.	Acquitted.	Pleaded Guilty.	Discharged.	Nol Prossed.	Not in Custody.	Continued.	Indictment Quashed.	Totals.
Violating local option law .	1		4			3		1	1					5
Breaking and entering			2			2								2
Assault with intent to murder	2		3			2						3		5
Larceny	5						1		1	2		1		5
Perjury	1												1	1
Murder	1		6	1	1	4				1		2		8
Obstructing an officer	1											1		1
Obtaining property under false pretenses			1			1								1
Aggravated assault	1			2	1	1						1		3
Altering mark of animal ..			1				1							1
Throwing missles into passenger train			2			2								2
Obstructing an officer	1											1		1
Resisting an officer	1		1							1		1		2
Crime against nature			1			1								1
Totals	14		21	3	2	16	2	1	2	4		10	1	38

SIXTH JUDICIAL CIRCUIT.

DeSoto County.

From January, 1905, to January, 1907.

CRIME CHARGED.	White Males.	White Females.	Colored Males.	Colored Females.	Convicted White.	Convicted Colored.	Acquitted.	Pleaded Guilty.	Discharged.	Nol Prossed.	Not in Custody.	Continued.	Indictment Quashed.	Totals.
Violating local option law	26		8		26	8								34
Larceny	4		2		3	2	1							6
Manslaughter	1		1				1	1						2
Breaking and entering			2			2								2
Keeping house of ill fame		2			2									2
Forgery			1			1								1
Burglary			1			1								1
Assault with intent to commit manslaughter			2	1		3								3
Lude and lacivious conduct.	1			1			2							2
Resisting an officer			1			1								1
Making false statement in writing	2				1							1		2
Aggravated assault	2		1		2	1								3
Assault with intent to murder			1			1								1
Murder	2		2		1	1	2							4
Assault and battery	1						1							1
Obtaining property under false pretenses			1			1								1
Totals	39	2	23	2	35	22	7	1				1		66

HILLSBOROUGH COUNTY.

From January, 1905, to January, 1907.

CRIME CHARGED.	White Males.	White Females.	Colored Males.	Colored Females.	Convicted White.	Convicted Colored.	Acquitted.	Pleaded Guilty.	Discharged.	Nol Prossed.	Not in Custody.	Continued.	Indictment Quashed.	Totals.
Adulterating turpentine ...	2				2									2
Murder	5		4			4	5							9
Manslaughter			1			1								1
Rape			1			1								1
Totals	7		6		2	6	5							13

LEE COUNTY.

From January, 1905, to January, 1907.

CRIME CHARGED.	White Males.	White Females.	Colored Males.	Colored Females.	Convicted White.	Convicted Colored.	Acquitted.	Pleaded Guilty.	Discharged.	Nol Prossed.	Not in Custody.	Continued.	Indictment Quashed.	Totals.
Selling intoxicating liquor without a license	3		1			1		2			1			4
Concealing birth of bastard.		1						1						1
Assault with intent to murder	1				1									1
Receiving stolen goods	1						1							1
Murder	2				2									2
Totals	7	1	1		3		1	3			1			9

MANATEE COUNTY.

From January, 1905, to January, 1907.

CRIME CHARGED.	White Males.	White Females.	Colored Males.	Colored Females.	Convicted White.	Convicted Colored.	Acquitted.	Pleaded Guilty.	Discharged.	Nol Prossed.	Not in Custody.	Continued.	Indictment Quashed.	Totals.
Breaking and entering			2			1	1							2
Larceny			6			6								6
Violating local option law .			5	1		4	2							6
Entering without breaking..			1			1								1
Forgery	1		1		1	1								2
Murder			1			1								1
Manslaughter			1			1								1
Altering mark of animal..	1						1							1
Embezzlement	1						1							1
Totals	3		17	1	1	15	5							21

MONROE COUNTY.

From January, 1905, to January, 1907.

CRIME CHARGED.	White Males.	White Females.	Colored Males.	Colored Females.	Convicted White.	Convicted Colored.	Acquitted.	Pleaded Guilty.	Discharged.	Nol Prossed.	Not in Custody.	Continued.	Indictment Quashed.	Totals.
Murder	2						1					1		2

Pasco County.

From January, 1905, to January, 1907.

CRIME CHARGED.	White Males.	White Females.	Colored Males.	Colored Females.	Convicted White.	Convicted Colored.	Acquitted.	Pleaded Guilty.	Discharged.	Nol Prossed.	Not in Custody.	Continued.	Indictment Quashed.	Totals.
Selling intoxicating liquor without a license	1											1		1
Altering mark of another's hog	1											1		1
Aggravated assault	1										1			1
Larceny	6				1							5		6
Embezzlement	1											1		1
Malicious mischief	2											2		2
Murder	2		2	1	2	3								5
Aggravated assault			1			1								1
Totals	14		3	1	3	4					1	10		18

Polk County.

From January, 1905, to January, 1907.

CRIME CHARGED.	White Males.	White Females.	Colored Males.	Colored Females.	Convicted White.	Convicted Colored.	Acquitted.	Pleaded Guilty.	Discharged.	Nol Prossed.	Not in Custody.	Continued.	Indictment Quashed.	Totals.
Murder	2		4			2	2					2		6
Larceny	7		9		6	9				1				16
Entering without breaking			1			1								1
Aggravated assault			3	1		4								4
Assault with intent to rape.			1			1								1
Assault with intent to murmurder	5		3		4	3						1		8
Bigamy			1									1		1
Keeping gambling house	1											1		1
Exposing poison	1											1		1
Cutting timber belonging to another	1										1			1
Adultery	1	1									2			2
Breaking and entering	1		5		1	5								6
Uttering a forgery					1									1
Shooting cow of another			1			1								1
Manslaughter			2			2								2
Embezzlement	2				2									2
Trespass			1			1								1
Robbery			1			1								1
Violating local option law	1				1									1
Totals	23	1	32	1	15	30	2			1	3	6		57

SEVENTH JUDICIAL CIRCUIT.

BREVARD COUNTY.

From January, 1905, to January, 1907.

CRIME CHARGED.	White Males.	White Females.	Colored Males.	Colored Females.	Convicted White.	Convicted Colored.	Acquitted.	Pleaded Guilty.	Discharged.	Nol Prossed.	Not in Custody.	Continued.	Indictment Quashed.	Totals.
Robbery			1			1								1
Forgery and uttering a forgery	1							1						1
Larceny			1					1						1
Assault with intent to murder			3					3						3
Assault with intent to rape			1				1							1
Burglary	1		1	1				1			2			3
Cutting fence of another	1											1		1
Cutting fence and mutilating cattle of another	1											1		1
Lewd and lascivious behavior			1			1								1
Adultery	1		2	3		4						2		6
Breaking and entering			1			1								1
Cattle stealing	3				2		1							3
Totals	8		11	4	2	7	2	6			2	4		23

DADE COUNTY.

From January, 1905, to January, 1907.

CRIME CHARGED.	White Males.	White Females.	Colored Males.	Colored Females.	Convicted White.	Convicted Colored.	Acquitted.	Pleaded Guilty.	Discharged.	Nol Prossed.	Not in Custody.	Continued.	Indictment Quashed.	Totals.
Assault with intent to murder	10		9		1	3	2				3	10		19
Breaking and entering	1		12		1	5		4		2		1		13
Larceny	6	2	14	2	1	5	2	8	2		2	4		24
Assault and battery	1		1			1	1							2
Perjury		1						1						1
Embezzlement	4		1				1				3	1		5
Robbery	6		4	1	1				2	1		7		11
Murder	1		4			3	1	1						5
Attempted robbery			1		1									1
Attempt to falsely impersonate another			1		1									1
Forgery	5		2		3	1		2				1		7
Aggravated assault	1		1			1		1						2
Assault			1			1								1
Carrying concealed weapons	1											1		1
Burglary	1		7				2	4		2				8
Asssault with intent to rob	1					1								1
Receiving stolen goods			2			1		1						2
Keeping gambling house	2							2						2
Assault with intent to commit manslaughter		1						1						1
Adultery	2	1			2							1		3
Beastility	2	1			2							1		3
Uttering a forgery	1		3								1	3		4
Obtaining property under false pretenses	1											1		1
Crime against nature	2				2									2
Totals	46	5	64	3	13	23	9	25	4	5	9	30		118

ORANGE COUNTY.

From January, 1905, to January, 1907.

CRIME CHARGED.	White Males.	White Females.	Colored Males.	Colored Females.	Convicted White.	Convicted Colored.	Acquitted.	Pleaded Guilty.	Discharged.	Nol Prossed.	Not in Custody.	Continued.	Indictment Quashed.	Totals.
Murder			10			3	1				6			10
Manslaughter	1				1									1
Rape			1				1							1
Assault with intent to murder			1						1					1
Totals	1		12		1	3	2		1		6			13

OSCEOLA COUNTY.

From January, 1905, to January, 1907

CRIME CHARGED.	White Males.	White Females.	Colored Males.	Colored Females.	Convicted, white.	Convicted Colored.	Acquitted.	Pleaded Guilty.	Discharged.	Nol Prossed.	Not in Custody.	Continued.	Indictment Quashed.	Totals.
Larceny	11		1				2			1	1	8		12
Aggravated assault	7				2			4		1				7
Assault with intent to murder	7		1		4	1						3		8
Killing animal without notice to owner	3						1	1				1		3
Mutilating ears of beef cattle	5				4							1		5
Cutting wire fence of another	14											14		14
Altering marks and brands of cattle	3											3		3
Breaking and entering with intent to commit a felony.			5									5		5
Arson	4											4		4
Lewd and lascivious conduct.	1	1								2				2
Carnal intercourse with unmarried female under 18 years of age	2										1	1		2
Manslaughter	1							1						1
Violating local option law	4		1			1	1	1		1		1		5
Entering without breaking.	5						5							5
Breaking and entering			1								1			1
Murder			4								4			4
Totals	67	1	13		10	2	9	7		5	7	41		81

ST. LUCIE COUNTY.

From January, 1905, to January, 1907.

CRIME CHARGED.	White Males.	White Females.	Colored Males.	Colored Females.	Convicted, white.	Convicted Colored.	Acquitted.	Pleaded Guilty.	Discharged.	Nol. Prossed.	Not in Custody.	Continued.	Indictment Quashed.	Totals.
Rape	1									1				1
Carnal intercourse with unmarried female under 18 years of age	2									1		1		2
Assault with intent to murder	3		1					1		1		2		4
Selling intoxicating liquor without a license		2				1	1							2
Forgery and uttering a forgery	1		2			1		1				1		3
Keeping gambling house	3		1			1						3		4
Killing domestic animal out notice to owner	1						1							1
Doing business without a license	1								1					1
Burglary	2										1	1		2
Murder	1											1		1
Aggravated assault	2		1		1							2		3
Larceny			1	1								2		2
Fraudulently marking hog of another	4											4		4
Violating local option law		1							1					1
Totals	21	3	6	1	1	3	2	2	2	3	1	17		31

VOLUSIA COUNTY.

From January, 1905, to January, 1907.

CRIME CHARGED.	White Males.	White Females.	Colored Males.	Colored Females.	Convicted, white.	Convicted Colored.	Acquitted.	Pleaded Guilty.	Discharged.	Nol Prossed.	Not In Custody.	Continued.	Indictment Quashed.	Totals.
Murder			9	2		4	1	1				5		11
Rape	1		1			1						1		2
Totals	1		10	2		5	1	1				6		13

EIGHTH JUDICIAL CIRCUIT.

ALACHUA COUNTY.

From January, 1905, to January, 1907.

CRIME CHARGED.	White Males.	White Females.	Colored Males.	Colored Females.	Convicted, white.	Convicted, colored.	Acquitted.	Pleaded Guilty.	Discharged.	Nol Prossed.	Not in Custody.	Continued.	Indictment Quashed.	Totals.
Violating local option law	6		45	1	1	22	3	8		16	1	1		52
Resisting an officer			1									1		1
Murder	2		16	1		12				5		2		19
Breeaking and entering			13			9		3		1				13
Assault with intent to murder	4		13			8	4	1		3		1		17
Forgery	2		2			1		1				2		4
Concealing stolen goods				1						1				1
Uttering a forged instrument			2			1						1		2
Larceny	2		8		1	6				1		2		10
Publication of criminal libel	1						1							1
Doing business without a license	10		1							11				11
Gambling			1			1								1
Failure to take marks and brands	1				1									1
Carrying concealed weapons			1				1							1
Rape			1			1								1
Carnally knowing and abusing a female child under 10 years of age			1							1				1
Aggravated assault	1		2		1	1	1							3
Embezzlement	5												5	5
Perjury	1												1	1
Obtaining money under false pretenses			1							1				1
Selling mortgaged property		2								1	1			2
Attempting bribery of grand juror	1									1				1
Trespass	1									1				1
Manslaughter			1			1								1
Obstructing railroad track			1										1	1
Robbery			1										1	1

ALACHUA COUNTY—*Continued.*

CRIME CHARGED.	White Males.	White Females.	Colored Males.	Colored Females.	Convicted, white.	Convicted, colored.	Acquitted.	Pleaded Guilty.	Discharged.	Nol Prossed.	Not in Custody.	Continued.	Indictment Quashed.	Totals.
Throwing an explosive into a dwelling.....			1			1								1
Assault and battery.....	1				1									1
Totals	38	2	112	3	5	64	10	13		43	2	18		155

BAKER COUNTY.

From January, 1905, to January, 1907.

CRIME CHARGED.	White Males.	White Females.	Colored Males.	Colored Females.	Convicted, white.	Convicted, colored.	Acquitted.	Pleaded Guilty.	Discharged.	Nol Prossed.	Not in Custody.	Continued.	Indictment Quashed.	Totals.
Assault with intent to rape	1									1				1
Violating local option law..	1						1							1
Manslaughter		1			1									1
Crime against nature.....			1			1								1
Aggravated assault	3				1				1		1			3
Having carnal intercoursee with unmarried female under 18 years of age....	1										1			1
Totals	6	1	1		2	1	1		1	1	2			8

BRADFORD COUNTY.

From January, 1905, to January, 1907.

CRIME CHARGED.	White Males.	White Females.	Colored Males.	Colored Females.	Convicted, white.	Convicted, colored.	Acquitted.	Pleaded Guilty.	Discharged.	Nol Prossed.	Not in Custody.	Continued.	Indictment Quashed.	Totals.
Selling liquor without license	1		5			4		2						6
Larceny	4		2	1	3	1		2				1		7
Assault with intent to murder			4			1	1	2						4
Breaking and entering			2					2						2
Aggravated assault			3		1	1		1						3
Violating local option law	1		4		1		3					1		5
Murder		1										1		1
Keeping gambling house		1										1		1
Doing business without license	6											6		6
Entering railroad car with intent to commit a misdemeanor			1			1								1
Shooting into a dwelling house			1			1								1
Totals	12	2	22	1	5	9	4	9				10		37

LEVY COUNTY.

From January, 1905, to January, 1907.

CRIME CHARGED.	White Males.	White Females.	Colored Males.	Colored Females.	Convicted, white.	Convicted, colored.	Acquitted.	Pleaded Guilty.	Discharged.	Nol Prossed.	Not in Custody.	Indictment Quashed.	Continued.	Totals.
Aggravated assault	1		2			2		1						3
Manslaughter			2			2								2
Violating local option law	7		5		6	4	1					1		12
Obtaining money under false pretenses	2		4		1	1					2	2		6
Carrying concealed weapons			2			2								2
Larceny	1		6			5	1					1		7
Murder			2			2								2
Breaking and eentering			1			1								1
Assault with intent to murder			5	1		5						1		6
Assault to carnally know and abuse a female child of the age of eight years			1			1								1
Entering without breaking			1			1								1
Totals	11		31	1	7	26	2	1			2	5		41

PUTNAM COUNTY.

From January, 1905, to January, 1907.

CRIME CHARGED.	White Males.	White Females.	Colored Males.	Colored Females.	Convicted, white.	Convicted, colored.	Acquitted.	Pleaded Guilty.	Discharged.	Nol Prossed.	Not in Custody.	Continued.	Indictment Quashed.	Totals.
Larceny	4		7	2	2	7					3	1		13
Breaking and entering			6	1		6					1			7
Selling liquor without license			4	1		5								5
Receiving stolen property			1			1								1
Assault with intent to murder	1		5		1	4						1		6
Forgery	1				1									1
Assault with intent to rape			2			2								2
Breaking and entering to commit a misdemeanor	2		2		2	2								4
Abominable crime			1			1								1
Robbery	1		4		1	4								5
Breaking and entering with intent to commit a felony.	1				1									1
Embezzlement	1		1		1	1								2
Resisting an officer			1			1								1
Killing hog of another	1				1									1
Murder	1		2				1					2		2
Falsely and maliciously imputing want of chastity to female	1				1									1
Aggravated assault			1			1								1
Perjury	4												4	4
Totals	18		37	4	11	35	1				4	4	4	59

MONROE COUNTY—CRIMINAL COURT OF RECORD.

From January, 1905, to January, 1907.

CRIME CHARGED.	White Males.	White Females.	Colored Males.	Colored Females.	Convicted, white.	Convicted, colored.	Acquitted.	Pleaded Guilty.	Discharged.	Nol Prossed.	Not in Custody.	Continued.	Indictment Quashed.	Totals.
Selling liquor on Sunday	2				1					1				2
Assault and battery	35	2	43	7	29	32	7		3	11	1	4		87
Imputing want of chastity to a female		1		1						2				2
Vagrancy	58	9	25	7	63	28			2	4	2			99
Assault with intent to murder	2	1	7		3	3	1			2	1			10
Drunkenness	38	3	3	4	41	7								48
Selling liquor without a license	7	1	3		5	1	2			2	1			11
Larceny	14		26	5	9	21	2	2		10		1		45
Trespass	7		3	1	5	3	1		1	1				11
Obscene and indecent language	6		8	9	6	15				2				23
Embezzlement	5		3		3	3	1			1				8
Carrying concealed weapons	3				3									3
Setting up and promoting a lottery	24				9			4		7	2	2		24
Aggravated assault	3		11	4	1	6		1		4	1	5		18
Failing to report to harbor master for a station at wharf	3				1				1			1		3
Malacious mischief		1	1			1				1				2
Setting up a game of chance	4		1			1				3	1			5
Entering with intent to commit a felony	2				1							1		2
Robbery			1			1								1
Keeping a gambling house	4				2			1		1				4
Forgery	6				3		2			1				6
Breaking and entering with intent to commit a felony	1		3		1	2	1							4
Non-support of wife and family	1		3			3					1			4

MONROE COUNTY—CRIMINAL COURT OF RECORD—*Continued.*

CRIME CHARGED.	White Males.	White Females.	Colored Males.	Colored Females.	Convicted, white.	Convicted, colored.	Acquitted.	Pleaded Guilty.	Discharged.	Nol Prossed.	Not in Custody.	Continued.	Indictment Quashed.	Totals.
Doing business without a license	7		1							8				8
Permitting minors to gamble	1				1									1
Obtaining property by false pretenses			2	1		2	1							3
Assaut	3		2		1	1			1	2				5
Stubborn child			2	1		2	1							3
Obtaining money by false promises	2		1		2	1								3
Attempt to commit arson			1							1				1
Resisting an officer			4			4								4
Entering without breaking with intent to commit a misdemeanor			2			1	1							2
Fornication		2	1	1	2	2								4
Conspiracy	5						2			3				5
Breaking and entering with intent tocommit a misdemeanor	2		3		1	2				1	1			5
Manslaughter				1			1							1
Destroying and injuring personal property	1				1									1
Tenant refusing to give up premises after expiration of lease			1				1							1
Selling lottery tickets			1			1								1
False personation	1		1		1	1								2
Using personal property without consent of owner	1										1			1
Uttering a forgery	1				1									1
Carnal intercourse with unmarried female under 18 years of age	1									1				1
Maintaining a nuisance	1				1									1

MONROE COUNTY—CRIMINAL COURT OF RECORD—*Continued.*

CRIME CHARGED.	White Males.	White Females.	Colored Males.	Colored Females.	Convicted, white.	Convicted, colored.	Acquitted.	Pleaded Guilty.	Discharged.	Nol Prossed.	Not in Custody.	Continued.	Indictment Quashed.	Totals.
Receiving stolen property				2		2								2
Interfering with an officer in the discharge of his duty	1		1		1	1								2
Totals	252	20	164	44	198	147	24	8	8	69	12	14		480

ORANGE COUNTY—CRIMINAL COURT OF RECORD.

From January, 1905, to January, 1907.

CRIME CHARGED.	White Males.	White Females.	Colored Males.	Colored Females.	Convicted, white.	Convicted, colored.	Acquitted.	Pleaded Guilty.	Discharged.	Not Prossed.	Not in Custody.	Continued.	Indictment Quashed.	Totals.
Breaking and entering			15			13		2						15
Attempt to commit rape			1			1								1
Carrying concealed weapons	9		17		7	11		8						26
Aggravated assault	7		11	1	5	7		7						19
Assault and battery	6		12	3	3	6	2	8		2				21
Assault	1		1		1	1								2
Selling liquor without a license	1		1		1	1								2
Larceeny	6		35		4	10	3	16		8				41
Enticing labor	1		1		1	1								2
Shooting into railroad car	1				1									1
Assault with intent to rape			2			2								2
Forgery	1		2		1	1	1							3
Selling liquor to minor	1				1									1
Manslaughter	2		2		2	1		1						4
Carnal intercourse with unmarried female under 18 years of age			1			1								1

ORANGE COUNTY—CRIMINAL COURT OF RECORD—*Continued.*

CRIME CHARGED.	White Males.	White Females.	Colored Males.	Colored Females.	Convicted, white.	Convicted, colored.	Acquitted.	Pleaded Guilty.	Discharged.	Not Prossed.	Not in Custody.	Continued.	Indictment Quashed.	Totals.
Living in open state of adultery			1			1								1
Violating game law			1			1								1
Cutting off head of hog before being dressed	1				1									1
Defamation of female character	1				1									1
Uttering a forgery	1		1			1				1				2
Breaking and entering wth intent to commit a misdemeanor				1						1				1
Hunting without license	2									2				2
Arson			1				1							1
Trespass	3		1	3				1		6				7
Carrying pistol without license			12					9		3				12
Arson			1				1							1
Trespass	3		1	3				1		6				7
Carrying pistol without license			12					9		3				12
Vagrancy			2	2			1	1		2				4
Adultery			2	2			1	1		2				4
Assault with intent to murder	1		1	1			2	1						3
Desertion of wife	2									2				2
Obtaining property by false pretense	1		4				1	3		1				5
Malicious mischief	5	1					1	1		4				6
Running automobile without light	1				1									1
Doing business without license	2		2					4						4
Gambling	1		6					7						7
Disorderly conduct			1					1						1
Common thief			1					1						1
Unlawful sale of liquor			2			1		1						2
Crime against nature	1		1		1	1								2
Killing hogs of another	2					1		1						2
Embezzlement	2		1		1			2						3
Adultery			1	1				2						2
Totals	65	1	156	17	32	62	14	88		43				239

DUVAL COUNTY—CRIMINAL COURT OF RECORD.

From January, 1905, to October 1, 1906.

CRIME CHARGED.	White Males.	White Females.	Colored Males.	Colored Females.	Convicted, white.	Convicted, colored.	Acquitted.	Pleaded Guilty.	Discharged.	Not Prossed.	Not in Custody.	Continued.	Indictment Quashed.	Totals.
Aggravatedassault	8		17	3		2	8	5		13				28
Assault and battery	14		13		5	6	4	4		8				27
Assault with intent to murder.	24	2	75	16	6	33	13	31		31	3			117
Assault with intent to rob			6			3	1			2				6
Attempt to rape			6			3	1			2				6
Arson	1						1							1
Playing baseball on Sunday	1				1									1
Breaking and entering	4		2		4	1	1							6
Beating way on train	29		24		12	14	1	20		6				52
Bigamy			1			1								1
Carrying concealed weapons	16		22		5	13	4	12		4				38
Carnal intercourse with unmarried female under 18 years of age	1						1							1
Conspiracy	4						3			1				4
Disturbing public worship			3							3				3
Driving horse without consent of Owner	1				1									1
Doing business without license.	71	1	1					67		6				73
Destroying and removing plants in grave-yard	2							2						2
Entering with intent to commit a misdemeanor.	15		55	1	7	19	8	22		15				71
Entering R. R. car	2		11			4	1			8				13
Entering with intent to commit a felony	*		8			4	1	1		2				8

DUVAL COUNTY—CRIMINAL COURT OF RECORD—*Continued.*

CRIME CHARGED.	White Males.	White Females.	Colored Males.	Colored Females.	Convicted, white.	Convicted, colored.	Acquitted.	Pleaded Guilty.	Discharged.	Nol Prossed.	Not in Custody.	Continued.	Indictment Quashed.	Totals.
Embezzlement ..	7		14	1	1	7	3	9		2				22
Engaging in a pugilistic exhibition			4			1		3						4
Exposing quail for sale	4				1		2	1						4
False pretenses...	3		13	1	1	7		7		2				17
Forgery	3		11	1	3	6	2			4				15
Fornication		1	1		1	1								2
Fraudulent use of electricity	1									1				1
Gambling			22			1		9		12				22
Inhuman treatment of prisoner by guard...	1						1							1
Impersonating another at election	1							1						1
Improper exhibition of deadly weapon				1						1				1
Keeping house of ill fame	4	2		2	3		1			4				8
Larceny	106	9	443	30		47	177	76	152	5	131			588
Robbery	1		6				1	2		4				7
Lewd and lascivious behavior ..		1	3	2	1	1	2			2				6
Manslaughter	2		4		1	2	2			1				6
Malicious mischief	1		1			1				1				2
Maiming hogs....	1				1									1
Maliciously destroying personal property	1		1			1				1				2
Maliciously killing animal of another			1				1							1
Perjury	1			2	1					2				3
Receiving stolen goods	3		2		1					4				5
Selling liquor on Sunday	1		5		1	3	1			1				6
Sodomy			1							1				1

DUVAL COUNTY—CRIMINAL COURT OF RECORD—*Continued.*

CRIME CHARGED.	White Males.	White Females.	Colored Males.	Colored Females.	Convicted, white.	Convicted, colored.	Acquitted.	Pleaded Guilty.	Discharged.	Nol Prossed.	Not in Custody.	Continued.	Indictment Quashed.	Totals.
Threatening to accuse another of crime	2												2	2
Unauthorized selling of railroad ticket	1									1				1
Vagrancy	28		20	3	9	8	8	9	3	14				51
Wilfully killing horse of another	1				1									1
Totals	366	16	796	63	67	189	249	281	155	164	134		2	1241

VOLUSIA COUNTY—CRIMINAL COURT OF RECORD.

From January, 1905, to January, 1906.

Only the proceedings of the Criminal Court of this county for the year 1905 are given on account of this office not having been furnished with the proceedings of 1906.

CRIME CHARGED.	White Males.	White Females.	Colored Males.	Colored Females.	Convicted White.	Convicted Colored.	Acquitted.	Pleaded Guilty.	Discharged.	Nol Prossed.	Not in Custody.	Continued.	Indictment Quashed.	Totals.
Gambling			31					31						31
Drunken and disorderly conduct			1					1						1
Assault	1		2					3						3
Illegally killing deer	2							2						2
Assault and battery	5		11		1	2		12		1				16
Larceny	2		11	1		1		12		1				14
Breaking and entering	1		7			1	1	4		1		1		8
Aggravated assault	1		7			1		7						8
Unlawfully catching food fish	3							1		2				3
Desertion of wife and child	1				1									1
Malicious mischief			1					1						1
Handling firearms in a careless manner			2					2						2
Carrying concealed weapon	2		8		1	3	1	3		1		1		10
Unlawfully capturing shad	5		1					6						6
Beating way on train			1					1						1
Affray	2		1			1		2						3
Violating local option law	11		10			1	1	15		1	2		1	21
Disturbing public assembly			2					2						2
Assault with intent to murder			5			2		1		1		1		5
Drunkeness			1					1						1
Robbery			2			1		1						2
Unlawfully hauling a seine	6							6						6
Resisting an officer	1		1					2						2
Trespass			3			2		1						3
Unlawfully killing a duck	7							7						7

VOLUSIA COUNTY—CRIMINAL COURT OF RECORD—*Continued.*

CRIME CHARGED.	White Males.	White Females.	Colored Males.	Colored Females.	Convicted White.	Convicted Colored.	Acquitted.	Pleaded Guilty.	Discharged.	Nol Prossed.	Not In Custody.	Continued.	Indictment Quashed.	Totals.
Carrying a rifle without license			1					1						1
Vagrancy	4						1	2		1				4
Throwing missiles at railroad car	1						1							1
Illegally shipping fish			1				1							1
Perjury	3						1						2	3
Unlawfully killing an animal	1											1		1
Arson	2				2									2
Assault with intent to ravish	1									1				1
Entering without breaking			1							1				1
Conspiracy and trespass	3									3				3
Cruelty to animals			2							1		1		2
Carnal intercourse with unmarried female under 18 years of age			1									1		1
Impersonating an officer.	3											3		3
Totals	68		114	1	5	15	7	127		15	2	9	3	183

HILLSBOROUGH COUNTY—CRIMINAL COURT OF RECORD.

From January, 1905, to January, 1907.

CRIME CHARGED.	White Males.	White Females.	Colored Males.	Colored Females.	Convicted White.	Convicted Colored.	Acquitted.	Pleaded Guilty.	Discharged.	Nol Prossed.	Not in Custody.	Continued.	Indictment Quashed.	Totals.
Manslaughter ..	21		3				2			3		19		24
Larceny	106	21	196	29	17	57	35	103		36	2	102		352
Assault with intent to murder	63	7	69	8	5	14	20	1		23		84		147
Aggravated assault	35		29	3	4	3	4	10		15		31		67
Assault and battery	96	8	59	30	12	15	18	34		30	1	83		193
Keeping gambling house ..	62		11	3	1		1	3		50	1	20		76
Maiming animal of another ...	7	1					1			1		6		8
Obtaining property by false pretenses	34		10		6	1		6		4	1	26		44
Cruelty to animals	5		12	1	2		1	3		2	1	9		18
Removing mortgaged property	8											8		8
Trespass	21		6		1	3	3	1		2	1	16		27
Embezzlement .	46	6	24	6	4	9	7	14	2	10	2	34		82
Placing obstruction on railroad track	8											8		8
Drunkeness	38	1	19	1			2	19		7		31		59
Malpractice in office	17						1			3		13		17
Selling liquor without license	124	37	49		10	11	9	19		25	1	135		211
Gambling	99	5	126		20	41	12	70		37		50		230
Carrying conweapons	28		30		3	1	2	25		4	1	22		58
Conducting lottery	29							13		2		14		29
Burglary	24		86		6	24	15	28		19		18		110
Receiving stolen goods	6		17	1	3	3	1	7		3		7		24
Resisting officer.	12		2			1	1	2		1		13		26
Robbery	12		14		5	4	1	1		2		13		26

HILLSBOROUGH COUNTY—CRIMINAL COURT OF RECORD—*Continued.*

CRIME CHARGED.	White Males.	White Females.	Colored Males.	Colored Females.	Convicted White.	Convicted Colored.	Acquitted.	Pleaded Guilty.	Discharged.	Nol Prossed.	Not in Custody.	Continued.	Indictment Quashed.	Totals.
Playing baseball on Sunday ...	18							18						18
Aiding prisoners to escape	2	1			3									3
Carrying pistol without license	18		9	1		1		23	1			3		28
Changing marks of sheep	3				1							2		3
Throwing missle into railroad car			3			1	1	1						3
Public use of obscene language	28	5	7	7	3	1	3	21		7		12		47
Having obsene picture in possession			1			1								1
Enticing servant	1				1									1
Desertion of wife	12		4					4		4		8		16
Maintaining gambling apparatus	54							2		43		9		54
Driving horse without consent of owner .			1			1								1
Assault with intent to rape..	1		5			4				2				6
Keeping open store on Sunday	3		7				1			4		5		10
Keeping house of prostitution ..			1							1				1
Adultery	3	2	3	4	1	1	6					4		12
Vagrancy	5		14	1		2	3	4	1	10				20
Forgery	9		8			3	2			2	2	6	2	17
Assault with intent to rob ..	6		1			1	1			1		4		7
Having carnal intercourse with unmarried female under 18 years of age .	8		1					1		2		6		9

HILLSBOROUGH COUNTY—CRIMINAL COURT OF RECORD—*Continued.*

CRIME CHARGED.	White Males.	White Females.	Colored Males.	Colored Females.	Convicted White.	Convicted Colored.	Acquitted.	Pleaded Guilty.	Discharged.	Nol Prossed.	Not in Custody.	Continued.	Indictment Quashed.	Totals.
Malicious injury to personal property		2	1	1		1	2	1						4
Selling lottery tickets	9		5				14							14
Lewd and lascivious behavior .	1	1	4	4		2		4		4				10
Compounding crime	3											3		3
Perjury	1		2					1		2				3
Violating quarantine regulations			1					1						1
Failure to report case of smallpox	1						1							1
Selling unwholesome food	2						1					1		2
Defamation of character	1			1						2				2
Selling leased property	1		1						1		1			2
Black mail	1						1							1
Libel	1				1									1
Killing animal of another	1				1									1
Bigamy			1					1						1
Maintaining nuisance	1				1									1
Enticing female under 18 years of age for purpurse of prostitution				1		1								1
Arson	3						1			1		1		3
Issuing check on bank without funds on deposit to pay same	3				1			2						3

HILLSBOROUGH COUNTY—CRIMINAL COURT OF RECORD—*Continued.*

CRIME CHARGED.	White Males.	White Females.	Colored Males.	Colored Females.	Convicted White.	Convicted Colored.	Acquitted.	Pleaded Guilty.	Discharged.	Nol Prossed.	Not in Custody.	Continued.	Indictment Quashed.	Totals.
Imputing want of chastity to unmarried female				1			1							1
Falsely impersonating an officer	2				2									2
Promoting a lottery			2	1			2					1		3
Attempt to commit arson ...	1												1	1
Open profanity .	1									1				1
Fornication	1			1				2						2
Obstructing established highway	3							3						3
Fornication	1			1				2						2
Crime against nature			1				1							1
Defacing public building			1			1								1
Inciting to commit perjury ..			1										1	1
Totals	1058	92	805	95	112	198	146	438	3	341	11	799	2	2050

ESCAMBIA COUNTY—CRIMINAL COURT OF RECORD.

Criminal Court of Record, from January, 1905, to January, 1907.

Only convictions and cases in which defendants plead guilty are reported for this county on account of this office not having been furnished with list of cases otherwise disposed of.

CRIME CHARGED	White Males.	White Females.	Colored Males.	Colored Females.	Convicted White.	Convicted Colored.	Acquitted.	Pleaded Guilty.	Discharged.	Nol Prossed.	Not in Custody.	Continued.	Indictment Quashed.	Totals.
Violating quarantine regulation	16								16					16
Larceny	24		124	16	6	38		120						164
Attempting to obtain property by false pretenses	2		1		1			2						3
Assault and battery	15		49	4	1	15		52						68
Gambling	27	1	165	6		6		193						199
Vagrancy	8	1	21	2		6		26						32
Carrying concealed weapons	13		29			9		33						45
Public use of obscene and indecent language	7	1	28	3	2	6		31						39
Forgery	5							5						5
Uttering a forgery	4		1					5						5
Lewd, wanton and lascivious persons in speech and behavior	8	8	15	37	5	11		52						68
Obtaining property under false pretenses	4		9		1	3		9						13
Affray			10	5		3		12						
Assault with intent to murder	1		11			9		3						15
Embezzlement	2		6			1		7						8
Open profanity			6	3		2		7						9
Trespass	5		7	2		2		12						14
Entering without breaking with intent to commit a misdemeanor	2		10			2		10						12
Perjury			1			1								1

ESCAMBIA COUNTY—CRIMINAL COURT OF RECORD—*Continued.*

CRIME CHARGED.	White Males.	White Females.	Colored Males.	Colored Females.	Convicted White.	Convicted Colored.	Acquitted.	Pleaded Guilty.	Discharged.	Nol Prossed.	Not in Custody.	Continued.	Indictment Quashed.	Totals.
Mortgaging property subject to written lien			7	2				9						9
Selling intoxicating liquor without a license	13	13	8	3		6		31						37
Beating way on train	43		14		1	1		55						57
Discharging firearms in pubic			2					2						2
Aggravated assault	1		27			11		17						28
Drunkenness	3			2				5						5
Assault with intent to rape			1			1								1
Breaking and entering with intent to commit a misdemeanor	3		10					13						13
Receiving stolen property			2	1		3								3
Peddling without a license	3							3						3
Robbery	1		1			1		1						2
Doing business without a license	2		2					4						4
Renting rooms for purpose of gambling	1							1						1
Keeping gambling house	7		2					9						9
Practicing medicine without a license.	1		1					2						2
Aiding prisoners to escape			3	1		3		1						4
Entering without breaking with intent to commit a felony			3			1		2						3
Being a stubborn child				1				1						1
Resisting an officer			1	1				2						2

ESCAMBIA COUNTY—CRIMINAL COURT OF RECORD—*Continued.*

CRIME CHARGED.	White Males.	White Females.	Colored Males.	Colored Females.	Convicted White.	Convicted Colored.	Acquitted.	Pleaded Guilty.	Discharged.	Nol Prossed.	Not in Custody.	Continued.	Indictment Quashed.	Totals.
Placing obstruction on railroad track			1					1						1
Fornication	5	5	18	11	2	2		35						39
Breaking and entering with intent to commit a felony			4			2		2						4
Manslaughter	1		1		1			1						2
Forgery and uttering forgery	1				1									1
Malicious injury to property			3			2		1						3
Carnal intercourse with unmarried female under 18 years of age			1			1								1
Attempt to commit larceny			1					1						1
Dissertion and non-support	1		1					2						2
Secreting property without embezzlement	1							1						1
Lewd and lascivious cohabitation			9	9		10		8						18
Attempting to have carnal intercourse with unmarried female under 18 years of age			3					3						3
Improper exhibition of weapon			1					1						1
Discharging firearms on public highway			1					1						1
Unlawful assembly			5					5						5
Keeping house of ill fame				1		1								1
Using worthless check on bank	1							1						1
Removing mortgaged property			1					1						1

ESCAMBIA COUNTY—CRIMINAL COURT OF RECORD—*Continued.*

CRIME CHARGED.	White Males.	White Females.	Colored Males.	Colored Females.	Convicted White.	Convicted Colored.	Acquitted.	Pleaded Guilty.	Discharged.	Nol Prossed.	Not in Custody.	Continued.	Indictment Quashed	Totals.
Assault with intent to commit manslaughter			1			1								1
Fraudulently altering marks of animals	2							2						2
Assault			3			1		2						3
Breaking down fence of another			1					1						1
Attempting to break and enter with intent to commit a felony			1					1						1
Maliciously destroying property			2					2						2
Discharging pistol on train	1							1						1
Totals	234	29	635	110	21	161		826						1008